SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 394

JOHN S. FUNK, PETITIONER

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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1 [Caption omitted.]

In United States District Court, Middle District of North Carolina

UNITED STATES
vs.
JOHN S. FUNK

Bill of exceptions

Filed April 12, 1933

Be it remembered that on the 15th day of December 1932 being one of the days of the regular term of said court, which began on the 5th day of December 1932, this cause came on to be heard before His Honor I. M. Meekins, U.S. District Judge, holding said court by assignment.

When and where the defendant was arraigned and pleaded not guilty, and a jury was duly sworn to try said cause, and the United States to maintain the issues on its part read the bill of indictment in open court, which is in words and figures as follows:

Bill of indictment

In the District Court of the United States for the Middle District of North Carolina. At Rockingham, September term, 1929

The grand jurors of the United States of America, within and for the Middle District of North Carolina, being duly empaneled, sworn, and charged at the term and in the district and division aforesaid, and *and* inquiring for that district, upon their
1(a) oaths do present: That at and during the times hereinafter set out, John S. Funk was a duly appointed, qualified, and acting prohibition agent for and on behalf of the United States of America in an official function under and by authority of the Bureau of Internal Revenue of the Treasury Department of the United States, attached to the office of the Federal Prohibition Administrator, for the eighth prohibition district, which includes the States of North Carolina, South Carolina, and Virginia, theretofore duly appointed as such by the Commissioner of Internal Revenue of the United States with the approval of the Secretary of the Treasury, pursuant to the provisions of the acts of Congress; that as such Federal prohibition agent the said John S. Funk was charged with the duty of enforcing the National Prohibition Act, commonly known as the "Volstead Act", and the acts amendatory thereof and supplemental thereto, and inquire into and investigate any and all violations of the said National Prohibition Act, and to apprehend any and all persons found in the act of violating the said National Prohibition Act, and to seize any and all vehicles and other properties used in

connection with the transportation of intoxicating liquors and violations of the National Prohibition Act, and to make a true and accurate report of his inquisition and investigation, and of all violations of said National Prohibition Act, and of his activities in connection therewith, to his superior officer, in the district where he was assigned to duty, and at the times hereinafter set out the said John S. Funk was duly assigned to work as prohibition agent in the States of North Carolina, South Carolina, and Virginia, and particularly in the Middle District of North Carolina and the Western District of Virginia.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: that on the 1st day of September 1928, and on divers other days both prior and subsequent to said date, Guss Dowdy and Charlie Martin (said Charlie Martin is not indicted herein for the reason he is used as a witness) and other persons whose names are to the grand jurors unknown, were engaged in the business of manufacturing, transporting, selling, and possessing intoxicating liquors, in violation of the National Prohibition Act in the State of North Carolina, and in the Middle District of North Carolina, and in the State of Virginia, in the western district thereof, as well as various other places in and out of the said States of North Carolina and Virginia.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: that the said John S. Funk, Guss Dowdy, and Charlie Martin (said Charlie Martin is not indicted herein for the reason he is used as a witness) on or about the 5th day of July, A.D. 1928, and on divers days prior *prior* and subsequent thereto up to the filing of this indictment, at and in the middle district of North Carolina and within the jurisdiction of this court, unlawfully, wilfully, knowingly, corruptly, and feloniously did combine, conspire, confederate, and agree together and among themselves and with each other and with divers other persons to the grand jurors unknown, to commit an offense against the United States, that is to say, to unlawfully manufacture, possess, transport,
1(b) barter, sell, furnish, and deliver intoxicating liquor, containing more than one half of one percent of alcohol by volume and fit for beverage purposes, to wit, whisky, brandy, home brew, and other intoxicating liquors, in the Middle District of North Carolina and within the jurisdiction of this court, and in other States and places to the grand jurors unknown, in a manner contrary to the requirements of and without complying with the provisions of the National Prohibition Act of October 28, 1919 ,and the acts amendatory thereof and supplemental thereto, and the rules made pursuant thereto.

It was a part of said conspiracy that the defendants Guss Dowdy and Charlie Martin should manufacture, possess, transport, barter, sell, furnish, and deliver intoxicating liquor both at wholesale and retail and that the said John S. Funk would aid, abet, assist them

in carrying on and conducting said business of handling said illegal liquor traffic as aforesaid, and otherwise dealing in intoxicating liquor.

It was further a part of said conspiracy that the said John S. Funk himself and through other parties working under his direction, should keep them, the said Guss Dowdy and Charlie Martin, and other persons to the grand jurors unknown, informed as to the movements of the other Federal prohibition agents and officers of the law charged with the enforcement of the National Prohibition Act, as aforesaid, and to notify, advise, and warn them of the easiest and 'afest ways of transporting and places of delivery, and of the presence or approach of officers of the law, and of the hazards of the roads, highways, and places, and otherwise aid, abet, assist, and protect said Guss Dowdy and Charlie Martin and other persons to the grand jurors unknown, in the illegal handling of said intoxicating liquor.

It was further a part of said conspiracy that the said John S. Funk should act as general advisor of said Guss Dowdy, Charlie Martin, and other persons to the grand jurors unknown, and that he, the said John S. Funk, in hazardous times and places, should go along with said defendants, their agents or servants, or in an automobile used as a pilot for said vehicles used in the unlawful transportation of said intoxicating liquors, and use his official position and office to insure protection of the delivery of said intoxicating liquors and the handling and conducting of said business as hereinbefore set out, and the immunity of said defendants, their agents, servants, and employees from molestation or interference of other officers.

It was further a part of said conspiracy that the said John S. Funk would not arrest any of the defendants or their agents, servants, or employees while engaged in the unlawful conduct of their business as hereinbefore set out, and would not seize their automobiles or other property, or intoxicating liquors belonging to them, and would not make a report of their unlawful dealings and transactions in connection with the same, and that he, the said John S. Funk, would use his official position and influence to protect the said defendants, their agents, servants, and employees in the event they otherwise became involved in the law by the efforts of other officers of the law.

1(c) It was further a part of said conspiracy that the said Guss Dowdy and Charlie Martin and other persons to the grand jurors unknown, should pay, and did pay, the said John S. Funk for the services rendered by him in assisting them in their unlawful acts and conduct as herein set out.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: that in pursuance of said conspiracy and to effect the object thereof the said John S. Funk, Guss Dowdy, and Charlie Martin, in the Middle District of North Carolina, and in other places in and out of the State of North Carolina, and within the jurisdic-

tion of this court, on or about the 5th day of July 1928 and on divers other days prior and subsequent thereto and up to the filing of this indictment, wilfully, knowingly, and unlawfully, did and caused to be done the following overt acts, to wit:

1. That on or about the 5th day of July 1928 the said John S. Funk, Guss Dowdy, and Charlie Martin had a conference in the city of Greensboro, State of North Carolina.

2. Further, in pursuance of said conspiracy and to effect the object thereof, on or about the 5th day of July 1928 and other days prior and subsequent thereto the said John S. Funk, Guss Dowdy, and Charlie Martin left the city of Greensboro, pursuant to the agreement they then entered into at the conference set out in the next preceding overt act, and went to the State of Virginia, where the said Charlie Martin and Guss Dowdy were then engaged in unlawfully handling intoxicating liquors.

3. Further, in pursuance of said conspiracy and to effect the object thereof, and immediately following the conference in Greensboro, as set out in overt act number "1" and the trip to Virginia, as set out in overt act number "2", the said John S. Funk did aid, assist, abet, and use his official office and position in protecting the said Guss Dowdy and Charlie Martin in transporting intoxicating liquors in violation of the law.

4. Further, in pursuance of said conspiracy and to effect the object thereof, during the month of September 1928, and prior and subsequent thereto, at Dowdytown, in the State of Virginia, and other places, the defendants entered into an agreement by the terms of which the said John S. Funk agreed to give the said defendants, their agents, servants, and employees protection in unlawfully handling and transporting intoxicating liquors, and in the conduct and operation of their illegal liquor traffic and to withhold and conceal their dealings and transactions in connection with the same, and to use his influence and official position to keep such violations and the violators out of court and from prosecution, and to otherwise obstruct, impede, and suppress evidence, to quash, and otherwise prevent prosecution of such violations and the violators.

5. Further, in pursuance of said conspiracy and to effect the object thereof, on the said 5th day of July 1928 and prior
1(d) and subsequent to said date, the said John S. Funk, Guss Dowdy, and Charlie Martin did enter into an agreement by the terms of which the said John S. Funk should be paid for his services and the use of his official influence in assisting the said defendant, their agents, servants, and employees in conducting and carrying on said unlawful liquor traffic.

6. Further, in pursuance of said conspiracy and to effect the object thereof, during the months of September, October, November, and December 1928, the said Charlie Martin did pay to the said John S. Funk a total sums of approximately $800.00.

7. Further in pursuance of said conspiracy and to effect the objects thereof, during the months of September, October, November, and

December 1928, the defendant John S. Funk, and others acting for him, frequently used his official position and knowledge of the movements of the Federal officers and communicated with the said Charlie Martin and defendants and persons to the grand jurors unknown, in making reports and advising them as to the whereabouts of Federal officers and when and where, the time and places, that it would be safe to move and unlawfully transport said intoxicating liquors, and warning them when it would not be safe for them to do so.

8. Further, in pursuance of said conspiracy and to effect the object thereof, on the 27th day of September 1928 the said John S. Funk at Greensboro, North Carolina, in the middle district, conferred with said Charles Martin about suppressing an alleged violation of the National Prohibition Act.

9. Further, in pursuance of said conspiracy and to effect the object thereof, on the 28th day of September 1928, in consequence of a conference at Greensboro, North Carolina, as set out in the next preceding overt act, the said John S. Funk went to the city of Roanoke, in the State of Virginia, where said Charlie Martin did pay to the said John S. Funk the sum of $200.00 for the suppression of an alleged violation of the National Prohibition Act.

10. Further, in pursuance of said conspiracy and to effect the object thereof, during the time of the dealings and transactions by the said John S. Funk and the said Charlie Martin, the said John S. Funk obtained from the said Charlie Martin one thirty-two Smith and Wesson pistol.

11. Further, in pursuance of said conspiracy and to effect the object thereof, during the time of the dealings and transactions between the said John S. Funk and the said Charlie Martin, as herein set out, in the city of Greensboro, middle district of North Carolina, the said John S. Funk let the said Charlie Martin have one thirty-eight Smith and Wesson pistol.

1(e) 12. Further, in pursuance of said conspiracy and to effect the object thereof, at various and sundry times, the said John S. Funk visited and communicated with the said Charlie Martin and Guss Dowdy and other persons in North Carolina and Virginia, and said defendants likewise visited the said John S. Funk in the city of Greensboro, North Carolina.

13. Further, in pursuance of said conspiracy and to effect the object thereof, the said Charlie Martin and other defendants delivered to the said John S. Funk large quantities of intoxicating liquors at his home in the city of Greensboro, middle district of North Carolina, and various other places.

14. Further, in pursuance of said conspiracy and to effect the object thereof, on or about the 20th day of December 1928, in the State of North Carolina, and the middle district of North Carolina, and within the jurisdiction of this court, the said John S. Funk did substitute for the purpose of analysis certain beer in the place of home

brew previously seized under a search warrant executed on the premises of W. H. Langley and wife under date of October 20, 1928.

15. Further, in pursuance of said conspiracy and to effect the object thereof, on or about the 20th day of December 1928, the said John S. Funk, at and in the city of Greensboro, North Carolina, sent the beer substituted for the home brew seized as set out in the next prece'ing overt act, to the Government chemist at Charlotte, North Carolina, for analysis, in an effort to suppress the evidence of the home brew seized under said search warrant, and prevent a prosecution against the said W. H. Langley and wife for the unlawful possession and sale of said home brew.

16. Further, in pursuance of said conspiracy and to effect the object thereof, the said John S. Funk failed and neglected to make a report of said seizure of said home brew under said search warrant from said W. H. Langley.

17. Further, in pursuance of said conspiracy and to effect the object thereof, on or the 11th day of January 1929, at Liberty, in the State and middle district of North Carolina, and within the jurisdiction of this court, W. H. Langley and wife did pay to Charlie Martin the sum of $150.00, who in turn paid said sum to John S. Funk for his services in substituting said beer of a low alcoholic contents in lieu of the home brew seized by the said John S. Funk under the search warrant herein set out, to prevent a prosecution of the said W. H. Langley and wife for violation of the National Prohibition Act.

18. Further, in pursuance of said conspiracy and to effect the object thereof, on the —— day of September 1928 the said John S. Funk had a conference with Charlie Martin, W. H. Langley, and others in which it was agreed that the said John S. Funk would guarantee said W. H. Langley protection, as far as the Federal law was concerned, in handling intoxicating liquors in violation of the National Prohibition Act.

1, (f) 19. Further, in pursuance of said conspiracy and to effect the object thereon, on the 23rd day of January 1929, the said John S. Funk did communicate with, and protect, the said Charlie Martin and others in violating the National Prohibition Act in the transportation of eighty gallons of intoxicating liquors.

20. Further, in pursuance of said conspiracy and to effect the object thereof, on or about the 28th day of January 1929, in the State of Virginia, said Charlie Martin did procure and cause the title to be transferred for a Ford roadster automobile, and the said automobile to be delivered to the said John S. Funk without any consideration whatsoever except the protection theretofore given.

21. Further, in pursuance of said conspiracy and to effect the object thereof, during the months of September, October, and November 1928, and for a long time prior thereto and subsequent to said months and up to the April term of Federal court of the middle district of North Carolina, in Greensboro, the said John S. Funk did associate with and assist Clay Fogleman in the liquor traffic in

violation of the National Prohibition Act, to wit: manufacturing, transporting, and selling intoxicating liquors.

22. Further, in pursuance of said conspiracy and to effect the object thereof, during the time of the association and assistance given the said Clay Fogleman by the said John S. Funk, the said Clay Fogleman paid the said John S. Funk large sums of money for protection and particularly the sum of $500.00.

23. Further, in pursuance of said conspiracy and to effect the object thereof, at the April term of the Federal court for the middle district of North Carolina, in the city of Greensboro, after the said Clay Fogleman had been convicted and sentenced to the Atlanta Penetentiary, the said John S. Funk executed and delivered to the said Clay Fogleman a note in the sum of $500.00 for him, the said Clay Fogleman, to keep quiet and not make any disclosure of their unlawful transactions.

24. Further, in pursuance of said conspiracy and to effect the object thereof, on or about the 10th day of December 1927, in Guilford County, State and middle district of North Carolina, Clay Fogleman and John S. Funk did unlawfully transport forty gallons of intoxicating liquors.

25. Further, in pursuance of said conspiracy and to effect the object thereof, during the month of October, 1928, and at other times prior and subsequent thereto, the said John S. Funk in the city of Greensboro, State and middle district of North Carolina, and within the jurisdiction of this court, did make and keep false records and reports and accounts of his official actions, and failed to make reports of violations of the prohibition law.

1 (g) 26. Further, in pursuance of said conspiracy and to effect the object thereof, during the times herein set out and for the purpose of corruptly prostituting and debauching his office and position, the said John S. Funk did issue false warrants and effect settlements and accept bribes therefor.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

E. L. GAVIN,
United States Attorney.

And the United States to further maintain the issues on its part called as witnesses the following persons, who testified as follows, to wit:

2 CHARLIE C. MARTIN, witness for the Government, being duly sworn and examined, testified as follows:

From June 1928 until sometime in the early part of 1929 I had two filling stations out near the North Carolina line. One was in North Carolina, and one was in Virginia. I had two in Virginia and one in North Carolina. I was also engaged in selling whiskey, wholesaling and retailing it, both. I covered the territory, from Danville to Richmond, to Raleigh, Sanford, Liberty, and as far as here, in this

State. I hauled it in automobiles, and kept most of it, over where I lived. Some I kept at the filling station. I had five or six pits, one in the house, one under the driveway, one in a barn, two or three down in the woods, just in front of the house. I had customers at those different places, handling my liquor, and had prior arrangements with my customers in respect to selling liquor.

I know John S. Funk. The first time I met him to talk to him was along in July. I don't recall the date. It was in the year 1928. Gus Dowdy and I were at the front of the filling station, and a boy that worked for me drove up and said he wanted to go over to Greensboro and get his brother's wife. I said, "All right, Gus, lets ride over there." We came on over here, and as we started back we picked Mr. Funk up under this underpass, I don't know what street it is now, going from here to Danville, and we taken him to Danville and went over to Gus's farm. He had cattle and mules. We went in the barnyard and talked. We went to Martinsville. Mr. Funk and Dowdy said they were going up there. From that time I saw Mr. Funk possibly once a week, or I will say, once every two weeks anyway. It was a good many times. I don't know just how long after that, Mr. Funk called me up and told me to come over to Greensboro right away, that he would meet me at the U-Drive-It, so I got in the car and came over here. I parked the car around the corner, and he was standing in front of the U-Drive-It, and he came over where I was. He said, "I got something I want to tell you. I have been told you are a good fellow." He said, "Undercover agents have bought a couple of pints of whiskey from your wife and Mrs. Craig. Now I am willing to do anying for you boys over there I can. I think if I can catch Dofflemeyer I can stop it." I told him, all right, I would appreciate it. Dofflemeyer was the undercover agent, was supposed to have bought the whiskey. Funk said he was going to court and would indict them at Big Stone Gap, and if he could get Dofflemeyer before he got there he might stop it. I asked him how much it will take. He said, "I don't know." I says, "Will $200.00 be enough?" and he said, "Sure." He also said he wouldn't charge anything for what he did. I said, "All right." The agreement was, when I left him, that if he could catch Dofflemeyer, he would call me next evening around three o'clock. I was at the filling station and heard the telephone ring. I knew it was long distance, and was expecting the call. I went to the telephone Funk told me to meet him in Roanoke at Patrick Henry that night, as quick as I could. So I gets the automobile, $200.00, goes to Roanoke, and meets him at the Patrick Henry Hotel. He told me
3 we would have to go up to the Roanoke Hotel, that Dofflemeyer was there. So we went, and he goes up on the elevator. When he got back he said some other officer was up there with Dofflemeyer, that I could not go up there then. But he says he got it all fixed. So we go in the toilet of the Roanoke, and I gave him $200.00. I left and goes back on back to town. He told me that he was going to

get the whiskey so I could convince my wife and Mrs. Craig that the man had bought the liquor there. I asked him how he was going to fix it, and he said he was going to get whatever he had to get. After I paid him the $200.00 I went back home. I can't recall whether we had supper that night or whether it was the time before. I was in Roanoke with him after that. As to the connection I had with him in conducting the liquor business, he came to my filling station and wanted to borrow $50.00, and I told him, all right. He brought up the subject of these two other favors he had done me. He said again that he didn't mind favoring us, and I just can't recall the whole conversation, but anyway I told him, and he told me that it was some undercover men working in Burlington, and he said if I would give him a list of the names of my customers, he would let me know if they arrested any of them. So I did, and he called me up and I go over to his house, and he showed me a list of names of people supposed to have been caught by these undercover men working in Burlington. Some were customers of mine and some were not, and I said "Do all you can to have them turned loose" and he said he would.

He called me and told me about old man Langley, I think it was. He lived four miles out of Liberty and was a customer of mine. Funk said that they had gone down and searched and found some home brew around the place there and some whiskey in some old sacks. So he told me he might get it fixed up, and I said all right. I think I was down at Langley's and told him that he had been caught. He said he knew it, that he ought to know it. He said, "What can you do about it?" I told him I could get it fixed, I thought. I later saw Mr. Funk concerning the Langley transaction. Mr. Funk told me he could get the Langley case straightened up for $150.00. I gave him the money. The case came back less than ½ of 1%, and I think was dismissed. Funk said he would settle and stop the Langley transactions by substituting some meal and water in same size bottles—just like that it was caught in—and send it off, malt, meal, and water. Arrangement for that was made. I fixed up some near-beer bottles and put it in the near-beer bottles and sent over to this house, and I saw him that day. I think court was going on. He said that wouldn't do; it was not the same kind of bottles. He said he would get the bottles. He took it there at his house, and came back and told me it was all fixed. I went to old man Langley and he gave me a $150.00 check. I gave the $150.00 to Funk and took the check; he didn't want the check, and I took it. I would recognize those bottles—the first two on this side [indicating] was the bottles that we fixed and he said wouldn't do. Those other bottles are the bottles that he fixed [indicating]. Those are the two that wouldn't do. The balance are the ones he fixed. That is the check Langley gave me [indicating]; it is the one I endorsed, as did also Hugh Williams, who lives in Danville.

(We offer check of W. H. Langley for $150.00 payable to Charlie Martin, dated Jan. 11, 1927, drawn on the Bank of Liberty, as Government's exhibit no. 1.)

4 (We offer these bottles here, Your Honor, as Government's exhibits 2, 3, 4, & 5.)

(Government's exhibits 1, 2, 3, 4, & 5.)

I took the check to Mr. Funk, but he didn't want it, so I gave him the money out of my pocket, and took the check myself, it is payable to me. We had an understanding or arrangement that he was to protect me and my customers, by looking out for me and letting me know.

(Defendant objects. Objection sustained.)

He told me that, any time, he would let me know, notify me that the law was up on that Martinsville Road, or in that section where I was selling whiskey, and he did, by telephoning. I had a telephone, there were five telephones in reach of me, and I received messages from him, over all of them. I know Nick Vaughn, he lives at Burlington, and is engaged in selling whiskey. He was one of my customers. Mr. Funk came to me and said Vaughn had been caught, and told me to go see Mr. Vaughn, and see what he could do, and I went to see him and he agreed to pay him, and Funk called me and said he had it fixed. I sent to Burlington and got Nick and brought him to my filling station. Funk came on the train and I sent to the depot and met Funk and his wife, and I sent Mr. Funk's wife over at my house, and he and I stayed at the filling station with Mr. Vaughn. Funk said he was afraid of Vaughn. I come to Greensboro that night with Mr. Vaughn, Mr. Funk, and his wife and a boy that worked for me, John Goodson. We drove by Mr. Funk's house. John Goodson drove. Me and Mr. Funk and his wife I think were in the back seat, and Vaughn and John were in the front. Mr. Vaughn gave me, I don't remember whether it was $150.00 or $120.00, in the presence of Mr. Funk. He was looking, I guess, right at it. I gave it to Funk, because he got his case settled, the same as Mr. Langley's case. He had a paper. He tore the seal out. There was a seal on this paper. He put the seal in his pocket and he gave me the paper and I gave it to Vaughn. Vaughn was never prosecuted on that transaction.

I know Ernie Andrews in Burlington, he was one of my customers, he was engaged there in the whiskey business. There was a transaction between Mr. Funk and me in respect to a prosecution against Andrews. Funk told me that Andrews had been caught, but Andrews said he didn't believe it. I told him I didn't know whether he was or not.

(Defendant objects to conversation with Andrews. Objection sustained.)

I took Andrews over to Funk's house. I introduced him as my brother-in-law, though he was not. Mr. Funk told me in the presence of Andrews that Andrews had been caught, and Mr. Andrews said he didn't have any money. Me and Funk went down to see him.

He said he would have some the next day or next night. Mr. Funk said he was bound to have some money to do it. We drove down to Andrews and he still said he didn't have any money. I can't remember the conversation between Mr. Funk and Andrews. Mr. Funk was present when I talked with Andrews in Burlington, he was standing as close to me as from here to the man at the door. Andrews never paid me any money. Coming back from Burlington Mr. Funk said he was bound to have some money. I let him have some. He said he would give it back when Ernie paid him. Certain officers stopped me on the highway near Burlington. Mr. Funk was present on that occasion, he wasn't with me, he was with the officers. I had some liquor going to Graham, some going to Burlington. I was to carry Mr. Andrews, I don't know how much, maybe 50 gallons. It was about six o'clock and getting dark. The telephone rang, and I went to the telephone. Mr. Funk said don't go on to Burlington, said they are going to catch you. I says all right, I know it. I said, who was going to be along?

I took the liquor I was going to carry to Graham, and unloaded it, and I drove on down there. After I got where I was supposed to meet Andrews car—the car was setting there. When I cut my lights off there were six or eight or ten come out and surrounded the car. Mr. Funk stepped on the running board and took the keys out. I commenced laughing. He said to hush. We went down the road and stopped at a barn. Someone suggested that the liquor was put off at the barn. Mr. Funk said he couldn't go in the barn. He told the others the Government wouldn't allow him to search it. So we turned around. The county law went in the barn. They did not find any liquor. Funk rode on back up the road on the car with me. He came on home and I waited. I came on by his house. He told me he thought they were going to get me. I said, "Oh, no." That was about three or four o'clock in the morning. I went on home.

I saw Funk over at the filling station after that. Sometime thereafter I got a letter, a sealed letter addressed to Mr. John S. Funk, Greensboro, N.C. That is the letter [indicating], I got it at Mr. Funk's house. It wasn't so long after I had been stopped down there by officers, near Burlington. Mr. Funk gave it to me, and I told him I wanted it. He said, all right, to show it to Andrews. I showed the letter to Andrews. I don't know what he done with it. I gave it to Andrews. That is the letter [indicating]. I am not in the liquor business now. I got caught and put in jail.

This is a letter stamped at Graham, N.C.

January 29th, 11:00 a.m., to Mr. John S. Funk, 748 Chestnut St., Greensboro, N.C. On the back of it: "From W. H. Lashley, 302 Fisher St., Burlington, N.C." The letter is: "Burlington, N.C., January 28, 1929. Mr. J. S. Funk, Greesboro, N.C. Dear Sir: Just a line to let you know we caught the fellow with the Cadillac that laughed at us last Wed. night. Enclose you will find a clipping from the paper about it. We also got Tony Chandler, who you have a case against in your court that has not been tried yet. Wanted to

let you know he hadn't quit. Please tell Judge Hayes about this as Chandler will come up before him soon and the people of Burlington want Judge Hayes to give him what is coming to him. Come down as soon as you can.

Yours very truly,

W. H. LASHLEY,
302 Fisher St., Burlington, N.C.

Night phone, #727W. Day phone, 321.

6 I do not know if Lashkey was out on the road the night we were stopped, as I did not know him then. Funk told me to show the letter to Ernie Andrews. To my knowledge Andrews never paid any thing.

I know Larkin Kivett. He lived about three or four miles from Langley. I had a transaction with Mr. Funk with respect to a prosecution against Kivett. He was a customer of mine. Funk said he would fix Kivett up for $100.00. I took him down to Larkin Kivett's and he got out about 200 yards up the road. I went to the house, I told Larkin, and he said all right. Larkin gave me $100.00. Bill Kivett and I got in the car, or walked back to the car, I don't recall. I gave the $100.00 to Mr. Funk. Mr. Funk got in the car and we go back to Greensboro. I do not remember what Funk told me about the liquor violation. Mr. Funk told me that there were two deputy sheriffs down there wanted to turn the case over to the Federal authorities. I don't know whether it was this case. Mr. Kivett had two or three cases in court at this time. I went to Harrisonburg with Mr. Funk to his home there. Mr. Funk, myself, his wife, and I don't know whether it was one or two of his children, went down to his mother's, spent the night and came back next day. I was in the liquor business at that time. Mr. Funk knew I was engaged in the liquor business at that time. We talked all the way down there, in respect to my being caught by officers, and what he had done to protect me. He told me that somebody had offered him $200.00 to catch me and he said he intended to catch me, and he told me some reasons he didn't. That was before my relationship with him. I had two pints of liquor with me on that trip. I paid him money. I gave him money because he had called me and did call me, and promised to help me if he knew if any of the law was up there, that he might save me from getting caught. Naturally, when he asked for money I gave it to him. I gave him an automobile besides money. It was a Ford roadster, and two gallons of peach brandy. From the time I met Mr. Funk until February 1929, some weeks I would see him two or three times. Sometimes I wouldn't see him *him*. Maybe he would call me up. I don't know just how often it was. I had showed him the storage places of my liquor in and around Dowdtown. I had a trap in the house, had 155 gallons there, which I showed Funk. I was not prosecuted by Mr. Funk.

Cross-examination by Mr. HAMMER:

I don't recall the first time I saw Funk to know him. The first time I had conversation with him was the time when Gus Dowdy and some young fellow with his wife and I met him down here about this overhead bridge, I was introduced to him there.

(Objection on the part of the Government. To what Dowdy said. Objection sustained.)

7 I know what he told me, not to let him know I was in the liquor business. He told me in May or sometime before that, that he was supposed to have caught me, so I guess he must have known it. I came here today from jail, where I have been staying for the last month or two. I was in jail for whiskey. I have been convicted of larceny, and for stealing an automobile. I have never been convicted for running stills. I violate the laws, but would not consider myself a notorious violator of the law. I have been convicted for felony twice, once I think, for felonious assault, four times for the liquor business. I had just been caught by two revenue officers before I gave information in this case, but had not been arrested. I did not open up to the revenue officers, I first told about Mr. Funk's connection with it. I think, when I went to Mr. Merrick's in Richmond, or to the assistant in his office. I did not think Merrick was going to give me protection. I was then charged with violation of the liquor law in North Carolina in the State courts. The day that Dowdy and I met him over there, and we picked up Funk, we went back to Danville. From Danville we went to Martinsville. I don't recall how we came back. I didn't know at that time, that Funk was on official business. I know what he said.

(Objection on the part of the Government. Overruled.)

I did not know that Funk was assisting on that trip—instead of taking a social trip with me—in locating a man that had escaped, and doing his duties as an officer. I had heard the conversation between Price and Gus Dowdy. I don't know that Mr. Funk has been one of the most active revenue officers in this section. I never seen him over there making a raid in my life. I have seen him over there twenty-five times, but not raiding—not what I call raiding. I call officers hunting for whiskey and taking it when they find it. I spoke of going to Roanoke and making a settlement or paying money. I sold liquor for that money—that where I got it. Mrs. Craig helped me pay the $200.00, I got from Gus Dowdy. She gave me check for $100.00. I don't know what I paid with the check. Mrs. Craig gave it to me to reimburse me for the $100.00. I gave Funk in Roanoke Hotel. When I went to Roanoke I went first to the Patrick Henry Hotel, from there to the Roanoke Hotel. I stayed in the lobby while Funk went in. I left the car on the drive in front of the hotel. There were two fellows sitting in car. I do not recall if I testified before that they did. I did not come by Greensboro when I came back to Roanoke. I came back through Martinsville. I got lost over there. Before I went to Roanoke I had

seen Funk standing in front of the U-Drive-It. I don't think anyone heard the conversation between us. He was particular not to let anybody be around. I did not say anything to him about that trip, when I came over here to see him. It was understood that he was to call me. I don't recall whether that $100.00 check was endorsed by Prillman, a moonshiner.

I started to Roanoke in the middle of the evening, three or four o'clock, something like that. It was dark when I got to Roanoke. I didn't see anybody in particular that I knew. I didn't see Dewey Doffiemeyer. No one came in the public toilet while we were down there. There were no shoe shiners, no boot-blacks in there. I could not tell the date of the time I was around at Funk's house and got the letter from Lashley. I do not know who broke open Funk's bureau and secretaries in his house while he was in Virginia.

8 I do not know who went through this property over there.

I know that Mr. Langley knew Funk, because he had seen Funk at my filling station, but I don't know if Funk knew Langley. I considered Langley a good customer of mine. Larkin Kivett was at home the day he gave me the money for Funk. I do not know if Funk knew Kivett.

(Question at this point.)

Q. As a matter of fact, what you were doing—you were going to these customers of yours and you were telling them that they were all caught and you would tell them you could fix it with Funk, and you kept that money yourself and were blackmailing your own customers, weren't you?

A. No, sir—not for $150.00. They were worth more than that for 1 week. I know that Prillman has the reputation of being a liquor dealer. I don't remember how it happened that I took the check for $150.00 to Williams—a lawyer in Danville—I have owed Hugh Williams fees. Why I offered that check to Funk instead of giving him the money if I had the money in my pocket—I told him here it is—I said if you want it take it—you are right here at the bank. These people didn't know me. No, sir; the bankers didn't know me.

I think Funk was the first one who told me that Nick Vaughn had gotten caught. He also told me about Ernie Andrews. He called me up part of the time, part of the time he was at my house, part of the time at the filling station when he gave me the information. I do not recall the dates. He would tell me on the telephone where to meet him—to come to his house—to the filling station. I met him here at the post office, at the U-Drive-It place, on the streets going towards Danville, in Burlington. I did not keep my eyes on Funk because I knew was a dangerous man, nor did I keep a tab on his movements to protect my customers. I was not furnishing him information during this time. I did not report the Johnson filling station, didn't know there was one in that section. I did not report "Judge" Womack in Danville. I did not furnish in-

formation, nor try to make friends with the revenue officers to cover up my own operations.

Nick Vaughn was caught on the road from Ridgway into Burlington. There were two cars in the bunch with me that time, two and his Cadillac. I don't recall who was in this Cadillac. Ernie Andrews had four or five boys with him; I don't know who was in it. The cars were not decoys that night. When Mr. Funk came there, he came with Deputy Sheriff Lashley, who had called Funk down there. I had started some liquor out. I sent the Burlington back. When Funk called me I sent the Graham back. I came back after I stopped with Nick Vaughn that night. I got into his house, in the morning about three or four o'clock. When I got to Mr. Funk's house—Mr. Funk and his wife were there. I stated before that only Mr. and Mrs. Funk were there, but after they put Mr. Huffstickler on the stand I recalled that he was there also. Funk handed me some papers—I thought they were warrants. I don't know what became of that paper I gave Nick Vaughn. Nick Vaughn has it. I gave it to him. He said it was for protection, he was going to call me any time he knew the law was out and I was in danger. He told me that at all times he was glad to help me, and he would be willing to do it.

9 He told me that every time he wanted a few dollars. I do not know that Funk was at Mount Airy, N.C., registered at the hotel, the night I said I went to his house. He was at my filling station after that, I do not know the date. It was between the time I first met him, when Gus Dowdy and I met him, and February—that date somewhere. I might have remembered the date on the former occasion, when I said it was the 9th of January 1928. It was fresher in my mind. It was not but a year old—now it is four. I could not remember the date now at all. I saw Funk in June or July 1928. I wouldn't be positive which. I say in June or July and from then on. I don't think I missed seeing him or calling him up, or his wife calling. She would put in the call for Mr. Funk, and he and I would talk. I think I called her on one or two occasions. I think that I called over there and Mr. Funk was out of town, and she told me he was out of town. I left word for him to call as soon as he got back. I would not say that I knew that John S. Funk was in South Carolina working then, instead of North Carolina, and in Virginia part of June. When I got back to the car, I handed him the money in the Kivett case. Me and him were all that was there. I believe Will Kivett walked up to the car. I didn't say before that Funk didn't go up to Kivett's and that Funk hid down in the woods while I went for the money. I did not go up and bleed Kivett for the money, and Kivett didn't think anything else but that it was for Funk.

9

Redirect examination by Mr. CARTER:

At this point witness produced a paper, and was asked, "What is this?" and answered, "That is the check for $100.00 Mrs. Craig

gave me to put with the $100.00 I paid Funk in Roanoke. She reimbursed me. It is dated September 29th. I could not say whether she gave it to me before or after I came back from Roanoke. It was the day or next day. I have seen that check there [indicating]. The signature is Mr. Funk's. It says September. It is for $15.00 payable to cash. I got it from him. I think it was paid, his wife mailed my wife the money for that check: I don't remember now."

(Check dated September 10, 1928, payable to cash, for $15.00, signed by John S. Funk, is marked "Government's Exhibit No. 10", and offered in evidence.)

(Government's exhibit no. 10.)

Recross examination by Mr. HAMMER:

I gave the car to him, he didn't buy it of me. The check came back, I don't remember that Mrs. Funk, herself, wrote me a letter sending the cash. It was paid sometime later. It was some transaction between my wife and Mrs. Funk about the check. I could not say now whether it was paid or not. I can't remember.

Mr. CARTER. (Pistol shown.)

Yes, sir, I have seen that pistol. Mr. Funk had it. He said he had a large pistol, he said he had a 32: I let him have it.

(Pistol mentioned above is marked "Government's Exhibit No. 9", and offered in evidence.)

(Government's exhibit no. 9.)

(Telephone calls pinned together and marked "Government's Exhibit No. 13.").

(Government's exhibit no. 13.)

Mrs. MAY CRAIG, a witness for the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CARTER:

My name is May Craig; lived in Pittsylvania County in the year 1928. I was engaged in running a lunch room. I know John S. Funk when I see him, that is all. I was informed by Charlie Martin that there was a prosecution against me and my sister in respect to the violation of the liquor law. Charlie Martin said, "I told you not to put your hands on liquor and handle liquor around here." He said evidently we had done it—the officers bought a pint of us. We said, "They did not." He said, "John S. Funk tells me they did." We went to crying, and he was mad. He said, "There is no use to bawl and cry, and I believe what he says: he says that he can get it fixed for you."

(Defendant objects to fixing—overruled for the present.)

Defendant's exception no. 3

He said, "He is going to let me know tomorrow afternoon: he is going to call me, try to see the man in Roanoke and call me tomorrow around three o'clock." Funk called, I called Charlie, and he said he would be there. Charlie said I would have to give him $100.00. I

didn't have it then. I had it in the bank, I gave it to him the next afternoon. It was Charlie's place of business, I worked there, sold lunches and drinks. I didn't sell liquor. I gave him the $100.00 because he said, "You evidently did", and I felt if an officer swore it I would have to go to jail. It hurt me to think they would take people up who had committed no crime, and send them to jail. That is the check I gave Charlie Martin, that is my signature. Later I came to Greensboro and had the man Dofflemeyer pointed out to me. Charlie brought sister and I to Greensboro one afternoon, and he drove us in front of the U-Drive-It Co, and we sat in the car. Charlie drove in front of the U-Drive-It filling station on a street that runs this way [pointing] and stopped there. Mr. Funk drove up. I had never seen him before. He was in a T model Ford. Charlie and him went in the U-Drive-It, and we sat in the car. Charlie came and told us Mr. Dofflmeyer is going to pass here in a few minutes, and you will see him. I recall other telephone messages or conversations between Charlie and Mr. Funk. Mr. Funk never came to that filling station where we stayed. 34F05 was one of the numbers of the phone. Mr. Funk didn't call over that phone. 34F25 was the telephone number in the place we stayed. Some one called who said it was Mr. Funk. I could not swear to his voice

11 Judge MEECHINS:

The witness testified that it was the day after Martin charged her with having sold some liquor, a telephone call received at her place of business, and an inquiry was made for Mr. Martin, and Mr. Martin took the phone and had a conversation. Mr. Martin got in a car. The next afternoon, as well as I remember, I gave him the check for $100.00. He told me he was going to Roanoke to see Mr. Funk and get it fixed. When he got back he said, "Well I got it fixed." Pete Buckner went with him from the house. This filling station was located out from Danville, in the country.

Cross-examined by Mr. YOUNCE (witness continues):

I judge about two and one half to three miles from Danville. I was living there and running the cafe for Charlie Martin. I had been running it for a couple months maybe at that time. I hadn't handled any whiskey, not a drop, hadn't sold any to any one. I was surprised when Charlie Martin told me they were going to indict me. I was much hurt about it. Charlie got mad. He didn't threaten me about it. I didn't tell anyone about having money in the bank. I don't suppose Charlie Martin knew about it. Charlie told me they wanted $200.00 and I should pay $100.00 of it. I told him I didn't have it, but that I could get it. He had not deposited money for me in the bank. He said he would have to pay the other $100.00, because my sister had sold whiskey. My sister is Charlie's wife. I had about $100.00 in the bank, I wouldn't say I paid out my last dollar. I gave Martin a check; I had a checking account. I turned this money over to Charlie Martin when I knew I was innocent of violation of the liquor law. Charlie Martin

brought me to Greensboro. If I had seen Mr. Funk before then I didn't know him. Charlie pointed him out to me. I never saw Mr. Funk after that time, until this trial. I recognized him as the man pointed out to me as Mr. Funk. I recognized him when his name was called as the defendant. All I know about this transaction is what Charlie Martin told me.

NICK VAUGHN, witness for the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CARTER:

My name is Nick Vaughn. I live in Burlington, North Carolina. I lived there during the fall of 1928 and spring of 1929. I know Charlie Martin. I was engaged in the liquor business a little, about that time.

By Judge MEEKINS:

Q. How much money did you pay?—A. $150.00.

By Mr. CARTER:

I gave it to Charlie Martin. Charlie sent a car over for me and said I had a man working for me, that was caught, Mr. B. R. Long. I told him Long never worked for me. He said he was indicted, he had me for aiding and abetting. He said, "I can get you out for $150.00, so I told him "All right", and we stayed over there until ten o'clock, and he said he had to wait to come back to Greens-
12 boro to bring Funk. I saw a man there that night that Martin said was Funk. Mr. Funk and a lady and myself and Charlie and John Goodson came to Greensboro. He put the lady out and Mr. Funk came down on some street here in Greensboro, put me and Goodson out at Clegg Hotel and we waited three quarters of an hour; and Charlie came back for us, coming to the King Cotton Hotel. Charlie went in the hotel and he asked if I had the money with me. I saw Mr. Funk in the door. I said, "I will pay $130.00," and Charlie said, "I will pay the other $20.00." He turned and walked back in there. He gave me some kind of paper. He had Long charged with whiskey and me with abetting.

Cross-examination by Mr. HAMMER:

I don't know Long by that name. There never had no Long worked for me. I don't think I had ever aided and abetted. Lots of people hung around there. If I am not mistaken it was the night of January 9th, 1929, that Charlie Martin got the money of me, when I came to the King Cotton Hotel. I knew Funk was the man with us that night. I think it was the 9th of January. I think it was between eleven and twelve o'clock that night at the King Cotton Hotel. I was not under indictment for violating of liquor law at the time I testified. I had been punished about six years ago for four bottles of home brew. I was not under suspended judgment.

ERNIE ANDREWS, witness for the Government, being first duly sworn, testified as follows:

My name is J. E. Andrews or Ernie Andrews. I live in Graham. I lived around Burlington during the fall of 1928 and spring of 1929. I do not recall a transaction between Mr. Martin and Mr. Funk over on the highway there. I went out there later with Mr. Martin. Also to Mr. Funk's house in Greensboro with him, stating that he was going to see Funk. We went out to Funk's house. Mr. Martin introduced me to Mr. Funk as Mr. Craig. We stayed there for some little time. Mr. Funk and Mr. Martin was in the back part of the house practically all the time, talking, I don't know what about. I saw them later in Burlington. They had talked to me something about my being caught about a sale of whiskey. Said something about $150.00. Charlie said, "I think that will be the easiest way out, don't you think so?" and Funk said, "Yes; that is the easiest way out."

To Judge MEEKINS:

I did not pay the money. I didn't have it. I have seen that letter [indicating paper writing]. Mr. Martin brought it to my house one night after we had been over to Mr. Funk's house. I was asked to bring it to the other trial.

Cross-examination by Mr. HAMMER:

I do not remember what day it was that I came to Greensboro with Martin. We got there somewhere around eight or nine o'clock, at night.

13 I saw Mr. and Mrs. Funk and some of the children. I do not know which ones. I do not remember if I were already under indictment when they went to talk to me. I was indicted by Revenue Officer Mr. Trexler. Sometime prior to that time Martin asked me for that $150.00. Funk never asked me for money, and I never paid him any money. He never cautioned me or warned me in any way about violation of liquor law.

Mr. CARTER:

Q. Do you recall what Martin said, if anything, when he gave you the letter?

(Defendant objects. Objection sustained.)

WILLIE KIVETT, witness for the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CARTER:

My name is Willie Kivett. I live in Liberty. I lived there sometime during the fall of 1928 and spring of 1929. I saw John Funk two or three different times, I reckon. I went to the filling station of Charlie Martin, with W. H. Langley, to Dowdytown. I saw Martin and two or three of his hands working around there.

To Judge MEEKINS:

We did not go away from there, we went into a garage and talked it over. Mr. Martin though he could get it stopped for $150.00. I saw Mr. Funk at Martin's filling station sometime before

Christmas. I passed him on the way up there, up from Greensboro to Danville, and he drove up while I was standing talking to Martin and sat there. I didn't see Langley give Martin a check. Larkin Kivett is my father.

I recall an occasion when my father, Larkin Kivett, paid Charlie Martin $100.00. I heard the conversation. He had a case against me and my father, and Mr. Martin thought he could stop it for $100, and he said he could stop it for $100.00. Father gave him $100.00. My father and I had been indicted. The money was for Funk—to get it stopped. I didn't see Mr. Funk. Martin said he was up the road waiting. I was prosecuted in that case.

Cross-examination by Mr. HAMMER:

The protection afforded by the $100.00 didn't do me any good. I do not know if Funk ever got a dollar out of that. All I know is what Charlie Martin told me, and that he got the $100.00. I have been convicted here in this court on four charges, whiskey, receiving stolen property, and served a term in the penitentiary, about twelve years ago.

RUSSELL LANGLEY, a witness for the Government, being first duly sworn, testified as follows:

Direct examination by T. C. CARTER:

My father's name is Henry Langley. In the spring of the yeaar 1929 and 1928 we lived three miles south of Liberty. I recall a conversation between my father and Charlie Martin in respect to paying off on account of a liquor violation, it was home brew. [Paper handed to witness.] That is my father's signature. I saw that check handed to someone. I heard the conversation between my father and Martin. My father is at home. He wasn't
14 subpoeaned here.

JOHN FUQUA, witness for the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CARTER:

I live in Virginia, just over the North Carolina line. My business is farming, and I own a couple of telephone lines. I owned a telephone system in 1928, which supplied service to the Dowdytown section. I have the record of my company there. My records show that phone no. 34F03 was in John Goodson's name, date February 1929, I think. It was in a filling station, C. C. Martin's filling station. I did not have a telephone there listed, 39F12. I do not have one of that number. I do not know no. 1621, whose telephone that was, or what line it was on. I don't think I had 34F21 in January 1929. In December 1928, 34F21 was C. A. Frazier's. That is in the Dowdytown section. I had a number there, 34F05 in 1928 and 1929, Mrs. May Craig. I just suppose it was in Charlie Martin's restaurant, that was the only connection I know of.

By Judge MEEKINS:

I suppose the telephone was in his filling station.

(Answer continued.) He stayed there most of the time. According to my records there was a change made in 34F21, it was discontinued and a city phone put in place of 34F21. Frazier's filling station was two or three hundred yards from Martin's filling station. Martin had several filling stations that he was boss of, I think.

WEDNESDAY AFTERNOON SESSION, DEC. 15, 1932

Mr. P. B. ZIRKLE, witness for the Government, being first duly sworn, testified as follows:

Direct examination by Mr. T. C. CARTER:

My business is, I am agent for the Southeastern Express Company. I was chief clerk in December 1928. The paper you handed me is a Government bill of lading covering shipment from here to Charlotte, Mr. O'Steen's office. Covering shipment consisting of three bottles of beer, for Mr. O'Steen's office, going to J. D. Albright, Jr., at Charlotte. It was shipped December 18, 1928. We don't issue express receipts. I took this out of my file at the last trial and left it as court record.

No. T. 507834, Government bill of lading, dated Dec. 17, 1928, showing three bottles of beer from J. L. O'Steen, Deputy Administrator, received by the Southeastern Express Company, Greensboro, going to J. D. Albright, Jr., U. S. chemist in charge, Charlotte, N. C., signed "J. L. O'Steen, by John S. Funk", contained notations signed by P. B. Zirkle, C/C, is offered in evidence as Government's exhibit no. 14."

(Government's exhibit no. 14.)

15 Judge MEEKINS. The bottles were delivered from Mr. O'Steen's office. O'Steen's name was signed by John S. Funk. It was three bottles of beer, shipped by O'Steen.

E. E. OAKES, witness for the Government, being duly sworn, testified as follows:

Direct examination by Mr. T. C. CARTER:

My name is E. E. Oakes. I am assistant chemist, U.S. Treasury Department. I am located in Charlotte, N.C. My chief is J. D. Albright, Jr. I have a record—as Government Chemist—of certain beer sent to our office sometime about December 17th, by J. L. O'Steen, seized from one Henry Langley. I made examination of it. On December 18, 1928. It was received from J. L. O'Steen, by express—three bottles of beer (near beer), content .35, .47, & .45 per cent alcohol respectively, less than ½ of 1%, labeled "Henry Langley, R.F.D. Liberty. Date of violation, 10–20–28." Again, on April 5, 1929, received two bottles from Mr. O'Steen in person, Langley,

Liberty, N.C., 10-20-28. One contained 5.78% alcohol, the other 5.50%, beer, home brew.

(Defendant objects and moves to strike. Motion allowed.)

J. L. MOORE, witness for Government, being sworn, testified as follows:

Direct examination by Mr. CARTER:

My name is J. L. Moore. I was prohibition agent in 1928, latter part of 1928. I accompanied other officers upon a search of the Henry Langley home near Liberty, Randolph County. Found on that search 36 bottles of home brew and two or three kegs, 10- or 15-gallon kegs, about two or three spoonsful of whiskey. Dofflemeyer, Mr. Funk, Mr. Johnson, Deputy Marshal. I made a report of that transaction to my superior officers, December 29th. I did not make a report prior to that time, because I understood Mr. Funk was to make that report. Later Mr. O'Steen wrote me and told me to make that report [certain exhibits shown]. I recall attending court in 1928 at Big Stone Gap, Virginia. I spent the night at Roanoke. Mr. Funk accompanied me there. He stayed at the Patrick Henry Hotel. I did not. I did not see Charlie Martin there on that occasion. Funk said something about wiring for reservations over there. Our car was giving trouble. We broke down at Martinsville. He said something about wiring for reservations to the Patrick Henry Hotel, but didn't wire. I don't think he left me after that conversation. I did not see Dofflemeyer, prohibition agent, in Roanoke. I had conversation with Funk about making report in the Langley case. I asked him why he hadn't made a report of it, and he said that it didn't contain any alcohol percentage, he had it analyzed and it didn't contain any alcohol. As well as I remember, that was December term of court, the first day I was here, 1928.

16 I want to offer those exhibits and we can read them later. They are letters dated Oct. 31, 1928, from J. L. Moore, pro. agent, addressed to Hon. J. L. O'Steen, Deputy Adr., Greensboro, N. C., marked for identification "Government's Exhibit No. 14"; also letter dated Dec. 29, 1928, from J. L. Moore, agt., to O'Steen, Depty. Admr., Greensboro, N. C., marked for identification "Government's Exhibit, No. 14"; also letter dated December 28, 1928, from J. L. O'Steen, Deputy Administrator, addressed to Mr. J. L. Moore, prohibition agent, Kannapolis, N. C., marked for identification, "Government's Exhibit No. 16."

(Government's exhibit nos. 14, 15, & 16.)

Cross-examination by Mr. HAMMER:

I wouldn't say I was charge in that raid, and I don't remember if I swore out the search warrant. I had purchased some whiskey from Mrs. Langley on the 24th day of August, the same year. This was October. I don't think it was my duty any more than it was anybody else's. Mr. Dofflemeyer made purchases at this place. Not every time is it customary for the man who starts a thing of that kind to make the report. I could not make a report of a case

until there was an analysis of the beer made. We had to get an analysis of it to tell whether the could be indicted for possession of home brew. Mr. Funk said he would send it to Charlotte.

J. O. O'STEEN, witness for the Government, being duly sworn, testified as follows:

Direct examination by Mr. CARTER:

I am Deputy Prohibition Administrator in this district, and were in the fall of 1928. I recall something about a seizure of what purported to be home brew, from Henry Langley's premises sometime in the fall of 1928. Later I got reports on the analysis of that seizure. I carried some samples to Charlotte, of the Henry Langley seizure. This the 5th of April 1929. The Langley seizure had been in the U. S. district attorney's office. I carried two bottles; started with three, one broke on the way. Analysis was made of it. I think I was in the office when the analysis was made. The chemist is here. My records show the date of the Langley seizure in the first instance. It was October 20, 1928.

Cross-examination by Mr. HAMMER:

This liquor was put in a vault in the district attorney's office at that time. All beers brought from other places were labeled and placed in there. The agent making the seizure did the labelling. The bottles that I took were labelled by me, they came out of the crate labelled "Henry Langley"; liquors do not disappear frequently. I could not say that any disappeared.. I did not store them in that vault for that reason. I put them in there because the district attorney wanted to pack his supplies in there. We were using that vault as storage room for firearms, etc., and for liquor we brought in.

17 (Government objects. Objection sustained.)

I knew it came from a box. The rest of that beer was destroyed. I don't remember the date, or who destroyed it. Gavin and I destroyed one quantity. At that time we were not transporting all the seize liquor to Charlotte. I could not say how much we destroyed. I don't have to make report just how much, what number of bottles we destroy. There weren't so many seizures at the time I got this, but there were several.

Redirect examination by Mr. CARTER:

I think I know Mr. Funk's handwriting.

Defendant agrees, and the handwriting is admitted [indicating]. I designate three bottles labelled in Mr. Funk's handwriting, and two bottles by me.

Mr. E. E. OAKES, witness for the Government, recalled.

Mr. CARTER in direct examination:

In April, 1929 I received two other samples, designated "Henry Langley" beer. Mr. O'Steen brought his in person. The analysis

was 5.58% and 5.50% on the other, designated as "Laboratory Nos. 5526 and 5525." These were the first bottles I analyzed. These were received by me December 18, 1928, and the date is on them. That is my mark on there, on all three of them.

Mr. YOUNCE on cross-examination:

I received these three bottles on the 18th day of December. They are the ones that had less than ½ of 1%. I received the other bottles on April 5, 1929. That is the two bottles Mr. O'Steen brought. I only know them by the label. I don't know how he made it, or who. I do not know whether they came out of the same identical lot of beer.

J. L. O'STEEN, witness for the Government, recalled.

Direct examination by Mr. CARTER:

I did not make the shipment from my office through the Express Company to Charlotte. The usual custom was to carry it down in automobiles. It was not the practice of agents to use the Express Co. I can't say that I recall any other shipment by express.

Cross-examination by Mr. HAMMER:

No sir, I did not take every sample in person. Other agents do transport it that way. So far as I know that was the only one that went by express. Bills of lading are not furnished me to ship to the chemist.

18 Mr. E. E. OAKES, witness for the Government, recalled.

Cross-examined by Mr. HAMMER:

Q. Mr. Oakes, state whether or not it is a frequent custom for you to receive samples of spirits by express for which you have to sign a Government bill of lading for the agent to you.

(Objection on the part of the Government. Objection sustained.)

I don't know without looking up the records, if we have been accustomed to receive samples of beer by express, up to the time the Langley beer was received.

PETE BUCKNER, witness for the Government, being duly sworn, testified as follows:

Direct examination by Mr. CARTER:

I knew Charlie Martin in the fall of 1928. I was attending to the front of the filling station for him. I made a trip with him sometime during 1928 to Roanoke.

Q. Did he state to you what his purpose for the trip to Roanoke was?

(Defendant objects. Objection overruled. Exception no. 4.)

Q. Did you accompany him to Roanoke?

A. Yes, sir.

Q. Did he tell you what he was going to Roanoke for?

A. Yes, sir.

Q. What was it?

A. He told me he was going up there to try to get a liquor case smothered out—said he was going to pay Funk money to get him to smother it out.

Q. Did you go with him up there?

A. Yes, sir.

Q. Did you see Mr. Funk?

A. Yes, sir.

Q. Under what circumstances did you see him?

A. I saw him in an automobile.

Q. Whose automobile?

A. Mr. Martin's.

Witness continuing, testified: Martin and Funk went to Patrick Henry Hotel. Martin said, "I am going up there a second." Mr. Funk came out of the hotel. Martin was under the steering wheel, and Bowers and myself in the back, and they drove to Hotel Roanoke. Mr. Funk said, "Wait a second till I come back. I am going to see." We sat there about ten minutes then Funk came back and said, "Alright Charlie, come on, everything is alright." They went inside the hotel. Bowers and myself sat in the car. Charlie came back and said, "Everything is alright." Mr. Funk came back and got off at the Patrick Henry Hotel. We came on back to Danville. I saw Funk once at Charlie's filling station. I do not know Mr. Funk's voice over the telephone.

Cross-examination by Mr. HAMMER:

I was living at the time I went to Roanoke, route #5, Yanceyville Road, Danville. I was living at Charlie Martin's place. May Craig was working in the same place. I don't remember that I told this court on a former trial that I didn't know what Martin was going to Roanoke for. I have been staying around Charlie Martin's place for six months. I am not there now. I have not been convicted of liquor business, or felonious charges. I pleaded guilty once to liquor charges. I attended to the front, selling gasolene, but not
19 liquor. I don't know who sold it. I didn't see a soul. Not anyone there handled it or sold it for Charlie.

W. B. LITTLE, witness for the Government, being first duly sworn, testified as follows:

Direct examination by Mr. T. C. CARTER:

My business is telephones. I am connected with Southern Bell system. I was connected with Southern Bell in 1928. John S. Funk had telephone during that time. "His number was 3094-J." Witness exhibited certain telephone tickets. "Yes, sir, these represent long-distance telephone calls."

D. C. TREXLER, witness for the Government, being first duly sworn, testified as follows:

Direct examination by Mr. T. C. CARTER:

My name is D. C. Trexler. My business is special inspector of prohibition. My home is in Salisbury, N.C. I work in this section.

Work out of the Washington office. I heard a conversation over the telephone, by Charlie Martin, when I was present in a hotel.

Judge MEEKINS. He was talking to Mr. Funk.

Cross examination by Mr. HAMMER:

I did not know Mr. Funk's voice. I had never talked to him before that day.

CHARLIE MARTIN, witness for the Government, recalled.

I recall being present in a room in a hotel in Greensboro, in the presence of Mr. D. C. Trexler here and Mr. Osteen, in which he had a conversation with a party over the telephone. The party talked to was Mr. Funk. When I talked to him, Mr. Trexler and Osteen were standing by the telephone. I put in a call for Mr. Funk at his telephone number, and had a conversation with him.

(Defendant objects. Objection overruled. Exception.)

I told him about it. I asked him, "What is the matter?" He said, "Don't say nothing till I see you", or something to that effect. I said, "I will meet you." I think he said, "Come to my house," and I said, "No you come to the hotel."

Mr. CARTER. Q. Do you recall whether Trexler was taking down what was said.

(Defendant objects.)

Judge MEEKINS. That is all you remember. I wasn't but a few words?

Mr. CARTER. This was the only conversation I had with Funk while they were present.

Cross examination by Mr. HAMMER:

I was not asking Funk to come because I was working with officers. I asked him to come.

20 To Judge MEEKINS:

As to why the officers were in my room I don't recall whether I met Trexler over there. There wasn't any arrangements that I would call up Funk. As they were in my room, I was to meet Mr. Trexler there. I was to come over there and meet him, and as to why I come to meet him at that time, I had already told the fellow in Merrick's office about Funk. I don't recall what I told Funk. I know Mr. Trexler asked me what he said. I told him. He copied it on a piece of paper, not all of it.

D. C. TREXLER, witness for the Government, recalled:

Direct examination by Mr. CARTER:

I was present in a hotel when Charlie Martin had a conversation with some one on the telephone. I was close enough to hear what was said by the party on the other end. I would say I was 3 or 4 feet from the phone. J. L. Osteen and Charlie Martin were with me at the time. The substance of that conversation was as follows: I had asked Martin to confer with me about the investigation I

was making at that time of Mr. Funk. I had asked Osteen to come up there with me. It was in my room in Greensboro Hotel. Mr. Martin called Funk. I didn't know who he would call. Mrs. Funk answered the telephone. Mr. Funk wanted Charlie to come up to his house at 11 o'clock that night and told him not to say anything—to be quiet—say nothing, but come on up there; he didn't want to talk on the telephone. Martin said, "Why, is there something dead up the branch?" and he said, "Yes," and refused to talk to him about a specific matter over the telephone. Finally Martin asked Funk to come to Clegg Hotel. About the last thing that was said, I didn't get the exact last words, but at the end of the conversation Martin told him to meet him at Clegg Hotel. I took the telephone conversation down.

Judge MEEKINS. You took down what you heard—you could hear distinctly?

A. I took down what I heard. I could hear distinctly.

Cross-examination by Mr. HAMMER:

I do not say that I can take down every word, under certain conditions, under which I can. I won't say I can take down every word. I will take the substance of your conversation down. I heard the substance of the conversation. There was a statement or two at the end of the conversation I didn't hear very plainly. I asked Charlie what it was. I didn't put that down. Charlie Martin was not at that time trying to trip John Funk into some incriminating admission. I didn't know Martin was going to call Funk. I was investigating a case then against Funk. I had Martin as a witness to confer with me. I was not using him as a witness to catch the other fellow. As I explained, there was no understanding at all. I didn't tell Martin before that he would not be prosecuted if he would testify. He was indicted and subsequently tried and plead guilty. It was after this. He was guilty of some liquor violation. He was indicted after the time I was investigating this case. He wasn't under indictment at that time. My understanding was he was indicted in this conspiracy, that his *his* name was mentioned in this conspiracy.

21 J. L. O'STEEN, recalled.

Direct examination by Mr. CARTER:

Mr. Trexler and Charlie Martin were with me in a room in Greensboro in which Charlie Martin held a conversation with some one. I heard the voice but I could not say I recognized it. I was standing at the door fixing to leave when he called. I heard the man in the room that was doing the talking. I was just opening the door. Trexler was up close to him, he was writing all the time.

LELAND HOWARD, witness for the Government, being duly sworn, testified as follows:

I am chief clerk in the office of the Prohibition Administrator. I have the record of the expense accounts and charges of prohibition

agents. I have the records, the latter part of 1928 and early part of 1929. All expenses that are incurred in the transaction of their official business, reimbursements for their expenses are the expenses of prohibition agents.

Q. Will you refer to the record of your office in December 1928, and see whether or not there is any claim for expense of John S. Funk as prohibition agent for telephone calls and tolls in and around Downtown, Danville, Va.

(Defendant objects as immaterial and irrelevant. Objection sustained.)

W. H. LASHLEY, witness for the Government, being duly sworn, testified as follows:

Direct examination by Mr. CARTER:

In 1928 I lived in Graham, N.C. I was an office deputy in the sheriff's office in Alamance County. I recall calling up John S. Funk in respect to the liquor raid in my county. It was between four and five o'clock, I think. I was present on that raid. I saw Charlie Martin there. I later wrote John S. Funk a letter. It was a week or more later.

Showing the letter to witness, the witness replied, "I wrote the letter January 28th."

Cross-examination by Mr. HAMMER:

I called John S. Funk on the phone in connection with that raid. I did not tell him who was expected that night. I didn't tell him Charlie Martin or any of Charlie Martin's people were expected.

CHARLIE MARTIN, recalled.

Cross-examination by Mr. HAMMER:

At this point the following occurred:

Q. I want to ask you this question: At the last trial, if you didn't testify that before you met Funk in Roanoke you had no agreement that he was to let you operate a liquor business, that it was after you came back that you had an agreement. "It was at the time the marshall searched on a warrant at Martin Weaver's home, that is the time the agreement was made, in the back yard of your filling station on the Virginia side."

22 Q. The agreement you are testifying to in this case between you and your codefendant Funk, whereby you were to pay him money and he was protect you in the whiskey business, was in the State of Virginia?

A. Yes, sir.

Q. In your filling station in Virginia?

A. Yes, sir.

Q. Were those questions asked you and did you make those answers?

A. I don't know, sir.

The Government rests.

Defendant's motion for directed verdict

(Defendant moves to direct the verdict. Motion overruled. Defendant excepts. Defendant's exception no. #5.)

The defendant offers the wife of defendant Funk as a witness for the defendant.

(Objection by the Government. Objection sustained. Defendant excepts. Exception allowed, no. #6.)

Offer of wife of defendant Funk as witness

After the ruling of the court, as above noted, the defendant insisted that the witness, Mrs. Funk, be permitted to state under oath the substance of her testimony for the benefit of the record.

(Government objects. Objection again sustained. Defendant excepts. Defendant's exception no. #7.)

JOHN S. FUNK, the defendant, being duly sworn, testified:

Examination by Mr. HAMMER:

I am the defendant in this case. I was born in Rochingham County, Virginia, 1891, 41 years old my past birthday. I was formerly in the service as revenue agent, for seven years, less eight days. I had served under Mr. John A. Murphy, Mr. R. B. Sames, Mr. B. C. Sharpe, Mr. A. B. Strout, and various subordinates, R. Q. Merrick. I worked at different times in different States. They changed the divisions around several times. The divisions composed different States. When I first went in the service I was in North Carolina and Virginia, later in Virginia, North Carolina, and Georgia was in the territory, and later South Carolina. I gave my work constant attention. The nature of the work was investigating and raiding distilleries, and violations of the national prohibition law. I came to this immediate location to locate March 15, 1926. Was in Charlotte February 1, 1926, temporarily. I located here from that time until about the 1st of December 1928. I can not say the exact date. I positively do not take a drink, total abstainer. I have never been arrested or accused of any crime up to this time. The first time I learned to know Charlie Martin was when he came here as he stated with Gus Dowdy. Gus was on Stuart Price's bond. I had made the case. Stuart Price was skipping the country, or had jumped his bond, and Dowdy had asked me to go with him to Martinsville. Stultz was chief of police there, wouldn't make the arrest unless it was alright. He wanted me to tell Stultz he had a right to turn him in.

Q. And you went along?

(Objection by Government. Objection sustained. Exception no. #8.)

FUNK, continuing, said: I don't recall the next time I saw Charlie Martin. I had not at any time or place been in any conspiracy to

protect Martin, positively not. I had no agreement of that kind. I never protected him. I did not ant any time, or in any court in which he appeared in connection with any criminal responsi-
23 bility, ever do anything to relieve them from criminal responsibility, in violation of duties as an officer. I heard one of these witnesses testify they saw me at the King Cotton Hotel, and had a conversation with me there, but I was not there at that time and did not have the conversation. I was in Mount Airy, N.C., on that particular day. I have in my possession, hotel register showing the records, showing the time I registered, the room I occupied, and the day I was there.

(Objection by Government. Objection overruled.)

The proprietor of the hotel is here.

Q. Will you please show that to the jury?

(Objection by the Government. Overruled.)

FUNK, continuing says: This is a sheet from the hotel record of Blue Ridge Hotel, January 9, 1929. I know by my diary, that I entered the 9th and left on the 10th. Here is a record I do not understand. I see my name here, but it is not in my handwriting.

From my diary "January 9th, Winston-Salem, 1929. Wednesday 8:00 a.m., conferred with agents Lumpkin, Deputy Sheriff Morris, and Coley and others, then at 11:30 a.m., by Campbell City coach, 41 miles to Mount Airy, arrived 1:00 p.m. Saw Tilley and Sheriff Smith, secured information, made investigation until 7:00 p.m. Transportation request 201858, for bus fare $1.75." I did not leave Mount Airy that day. I spent the night there. "Mount Airy, N.C., January 10th, Thursday. Investigation. By Campbell Bus Line 10:30, 41 miles to Winston. Transportation request 201859." This is a diary I kept from which my daily reports were made.

By Judge MEEKINS:

You made entries at the time? You don't know how far Mount Airy is from here?

A. I would say 70-odd miles.

FUNK, continuing, says: It is forty miles I would say from Mount Airy to Winston-Salem. I think it is thirty miles from Winston to Greensboro, seventy-one miles in all. I was out of this district the night it was testified certain things occurred at the King Cotton Hotel. I got no money from Charlie Martin, with reference to the Ernie Andrews or Nick Vaughn proposition.

Q. Something has been said about Nick Vaughn and Charlie Martin coming to your house one night?

(Government objects.)

I did not know Nick Vaughn. He was never at my house. I didn't know him until the trial came up. I didn't know him until he came to the court room. I had no connection with Ernie Andrews. I had no transactions with Charlie Martin, for Nick Vaughn. I did not call up Charlie Martin in regard to some trouble his wife and sister-in-law got into. I didn't know of either of the ladies. Mr. Martin

was brother of Chief of Police Martin at Danville, a high-class gentleman.

Charlie Martin was his brother. He gave me information on Martin Weaver, gave me information about "Judge" Womack, gave information about the Johnson filling-station crowd. I raided the Weaver place. That had been moved. Searched all over the country for a still. At Weaver's place we found where the still had
24 been. I didn't know Langley, wouldn't know him now, if he were pointed out to me. Charlie Martin positively did not get money for me from Langley. I did not go up there with him. I was on the Langley raid, Agent Moore, Agent Dofflemeyer, myself, and Mr. Johnson, at that time deputy marshal. We found two cases of beer, capper, and a few drops of whiskey; seized the beer and brought it up here. That evening I met my wife out here, and Mr. Moore and Mr. Johnson took the beer and carried it in. I never saw it until I got three bottles and shipped to Charlotte. Moore came over here during December court, said they had been writing him about a report. There was no understanding. Moore and Dofflemeyer initiated the case. I didn't know about the case until they called me to go with them on the raid. I didn't even help carry the beer into the place. I sent it to the chemist. I sent it by express, as they had ben sending whiskey and beer there, on Government bill of lading. I have copy of bill of lading that I retained. Up until I went out of the service, I never heard of anybody carrying it over there, unless they were going anyway.

I did not put the meal and water in the bottles. In fairness to me and the Government, I went to get this beer. Miss Brock, clerk in the district attorney's office, gave me the key. Her desk was in front of the vault, I went in the vault, got the beer out, a colored man was along with me, a janitor. John Galloway was the janitor. There was two crates of beer from the Langley raid. There wasn't but one crate when I went in there. I got it out and locked the door and gave the key to Miss Brock. I asked the janitor for a box to ship it in. They got the box, helped me pack it with excelsior. I did not fix up any concoction.

I think I should be allowed to say something more about the report. I could not have made an intelligent report. Moore had made purchases there. I knew nothing about the search warrant. I didn't have anything to do with that, didn't execute it, couldn't have made an intelligent report. I don't know Larkin Kivett today, I did not go to his house, positively not. I never had anything to do with that. I never got any money of him through Charlie Martin or anybody else.

Judge MEEKINS. You did not go to his house?

FUNK, continuing, says: I never got any money of his, through Charlie Martin or anybody else.

Judge MEEKINS. It is untrue that Martin's sister-in-law paid you $200.00 to stop a matter against her.

FUNK, continuing, says. It didn't happen at all. I did see Charlie Martin, Martin came into Roanoke and gave me information on "Judge" Womack. He had been here the day before and saw my wife. I didn't see him. I did wire him that he could see me in Roanoke. I was particularly anxious to get "Judge" Womack, if it was true. I did not see Martin the day before. I wired him I would be there. I saw him at the Patrick Henry Hotel. I never went to Roanoke Hotel with Martin, and I didn't see Pete Buckner and Ed. Bowers. I went to the show that night. I have not at any time or any place or with any officers or officials tried to use my influence to prevent the prosecution of Charlie Martin or any one of those other men mentioned in connection with this case. I did not get money from Vaughn, $150.00, and none from Ernie Andrews. I positively did not tell Martin that I would let him know when the law was on the Martinsville road. I couldn't have done that, if I wanted to. I wasn't in the State of North Caroline from the 5th of July until the last day of July 1928. I was in South Carolina, Columbia and Charleston, and didn't return to this State until, I think it was the 30th day of July 1928. I was out of the State. I didn't even have my feet on North Carolina soil.

I went to Big Stone Gap, around there a week in commissionsers hearing, 220 miles the other side of Roanoke. Prior to July 5th, for three months I was working practically all the time through the southwest part of Virginia, from Middlesboro, Kentucky, down to Pennington Gap, through Wise County, southwest Virginia, in that section, under Mr. Alexander (who is here), deputy prohibition administrator of western district of Virginia. I don't think I even saw Charlie Martin during that time. I personally didn't. Mrs. Funk wrote me a letter over there about the $20.00 check. I believe I did see him at the March term of court. I did not write him any letters. The letter introduced, Mr. Funk wrote. I didn't even know Martin had that check. That was cashed by another party. He did not give me an automobile. I bought a little T Model Ford roadster. Paid him $20.00, but it was perfectly legitimate deal. If anything, I paid him too much for it. I paid all it was worth. Later I had it painted, and a new radiator and various other things. It was a legitimate deal.

As far as those telephone calls made to Dowdy relative to the Jim Riddley case, in which he was a Government witness, the district attorney, Mr. Garvin, assigned me to work with him on that case. The case was prosecuted in this court. I did have a telephone conversation with Martin. The first thing he said, as I recall it now, was "Something dead up the creek!" When he called me, he would use some such expression. He said to call him, that if they found him calling they would say he was a stool pigeon. He would tell me when to call him and I would call him. In this particular case he called up. Very few words were said.

Cross-examination by Mr. CARTER:

I called Gus Dowdy, concerning the Riddle case. I called about it, and called about his parole. I don't know the date of the trial, 1927 I think. I don't know if that is the only Gus Dowdy call in that bunch. I haven't looked them over.

Q. Asked by district attorney. "You are not with the Prohibition Department? When were you discharged?

FUNK (continuing). I was not discharged by the Prohibition Bureau because of the fact that Clay Fogleman, a bootlegger and now awaiting sentence, held my note. I did give Clay Fogleman's wife, right here in the courthouse, a note for $50.00. It rep-
26 resents money that I owed Clay Fogleman. At the time I gave that note to his wife, he had not been convicted and sentenced at that same court, to the Atlanta Penitentiary for violating the prohibition law. He was here for trial, and was in custody, later being convicted. I testified against him. All the cases came up at the same time, and I testified in that trial. I borrowed the money from him, when he was driving for us. Fogleman was not on probation. I had caught him myself. He was driving us at the instigation of Captain Merrick and Frank A. Linney, United States attorney then. He had been arrested, I had arrested him. I gave Fogleman a note when he loaned me the money. I gave his wife a duplicate of it. I do not know what Fogleman made a day. He made so much per mile, I think ten or twelve cents a mile. At the time he was driving he was not one of the most notorious liquor runners in this section. Even after he quit driving for me, he drove for O'Steen. I don't think he was handling any liquor at all. I paid Mrs. Fogleman what interest I could on the note. I expect to pay it. I borrowed the money when he was driving for us. Mr. Sharpe loaned me some money, and he called on me for the money when the administration changed. Fogleman was at the house at the time, and offered to loan me the money. I borrowed it. He drove for James A. Clifton, Johm W. Smith, Captain Merrick, and several times for O'Steen, and some for Trexler. At least they went with him. I know he was arrested in High Point in possession of a stolen automobile, but that was afterwards. I don't know when I borrowed the money. He lost the note. The nearest I can tell you: Jack Tracy and I were on the Virginia line with him watching for cars reported to be hauling liquor. On that night there was a wreck the other side of Reidsville. I do not know how long it was before I gave him the new note. I can find those papers at home I am trying to tell you. I told you as near as I could tell you, it was when Merrick took over the administratorship of this district. Mr. Blalock drew it up, a lawyer. I delivered the check out in the hall, to her (Mrs. Fogleman).

I was at Mounty Airy on January 9th. I was also there on the 10th. I came to Winston-Salem at noon, and stayed there. My diary

doesn't show that I came back to Greensboro that day. No, I do not know anything about this ticket. (Handed ticket.) It wasn't made from my phone. It says 5050. I don't recall now. Yes, it is the U-drive-It number. That is my name on there. I do not know whose number 1621 is over at Danville. I could not make that call from 5050 to 1621 on January 10th, because I was in Winston. It might have been charged to me, I sometimes did not see my bills. Mrs. Funk paid them sometimes. I was in Winston the 11th. I don't know who made that call when I was in Winston. I was in the Winston on the 12th. I was at home I guess on the 13th. I might have had a telephone message to Danville at 1621 on that occasion [Handing witness paper]. I didn't make any of these tickets. This is my telephone number 3094-J. This is changed, it says "Funk, Danville, 1621." I don't know what the phone number is. On January 23rd, I was in Charleston, S.C. Left Charleston 1:00 a.m. by Southern, 320 miles to Greensboro, N.C., arrived 12:35 p.m. That was Wednesday. On Thursday "Arrived at 12:35, By private auto 7 p.m with Hoffstickler, 30 miles to point near Burlington, joined Sheriff Rudd and deputies, lay in wait for autos reported transporting liquor, returned Greensboro three a.m." This was the 23rd of January, I was in Charleston, S.C. I left there in the morning.

27 This ticket is dated January 23, 1926. It is from Funk, from 3094-J to Charlie Martin, 5:25 p.m. I didn't make that call. I guess I paid it, if it was charged to me. I made calls to Charlie Martin, several times, about the title to this automobile. I don't know what phone number 1621 is, but there are other people at Danville, besides Charlie Martin. I made call to Charlie Martin—I don't deny. I wouldn't say I associated with him promiscuously. I did take him and wife to my mother's home in Virginia. I am not positive, but I think it was January 17th, and came back on the 18th. I only have "On annual leave three days." I might have gone the 18th, back the 19th. I wouldn't say which. We were gone two days. It was just five days after we got back from this trip, that I waylaid him at Burlington and made the raid of the 23rd.

I don't recall if I had any communication on February 1st and 2nd. This ticket says to "34F03" both of them, February 1st and 2nd. I don't know whether I had any messages, February 1st and 2nd, 1929, nor February 5th, to 34F03. I was in Greensboro, yes sir. This ticket is from Funk to 34F03, on January 31st, 3049-J and 34F03. I have seen this pistol. I don't know where I first saw it. I bought it. It was a perfectly legitimate deal. It was mine. I traded it to Charlie Martin for a .32 Smith and Wesson. I can not tell you the date. It has been four years. I didn't make any note of it. Charlie Martin never visited in my home; he offered to take me to my mother's house. I went up with him, paid the gas bill. That is all there was to it. There wasn't a thing wrong with the trip. He didn't give me the automobile. I don't know the date of buying it, until I look it up. I haven't the titles to the car now.

When I disposed of the car I disposed of the title. I would not be positive of the date. It seems to me it was about the 11th of January. I don't know. I made a visit up to my mothers. Since then I learned that he was in the liquor business. I don't know how long I had known him before that time. I went with Gus Dowdy up to Martinsville. I don't recall the date. My only negotiations with Martin was he giving me information—he was giving others information at that time. I did not make cases against Dowdytown on the information he gave me; that was not in my territory, Martin was giving me information on bootleggers and blockaders. He did me just as he did when he took other agents from Capt. Merrick's office, and made cases with me. He testified he went to Richmond to see Merrick, so I judge he gave other agents information. I didn't know any time he was giving me information he was giving others information at that time. I did not inquire from anybody over around Danville as to who Martin was and in what business he was engaged in. I found I could rely on him. I caught Johnson and his son. They were prosecuted in this court. I never made any case against Womack. He lived in Danville. I don't recall if I made any other cases, except the Johnson case, during the months that Martin was giving me information. I did not know Gus Dowdy was engaged in the liquor business when I went with him to Martinsville. Had I gnown it I would have prosecuted him. I knew Gus had the reputation of being in the liquor business. I did not know it.

Q. Don't you know you arrested Gus in the prosecution of Jim Riddle, highjacker?

Ans. 165 gallons.

Q. Yes.

A. At the instigation of your office.

Q. You knew Gus was in the liquor business?

A. Yes, sir; certainly.

Q. Two years before that time?

A. Gus had the reputation of being the liquor business. As to knowing it, I didn't know it. I made the case against Stuart Price, another bootlegger. I did not make a report of my official transaction to my office.

28 Yes, I went to accom'odate Gus, and because of my interest in the Price case. I wanted to see him caught. I made investigation about Price while there. I didn't make a report to the office about it, because I wasn't doing it for the office. Dowdy asked me to see him, and I didn't refuse. Jimmy Moore asked about these reports at court. There was something said about my report in the Langley case, and the beer analysis. There was something said about it. It was four years ago. It was a matter of Moore passing the buck to me. After Moore said, "You are here at home, will you send that beer off?" I agreed to do so. I sent three bottles to Charlotte, and he made the report. I didn't get the analysis back, it went to the office. I don't recall if I ever asked about it after that.

It wasn't my place to make a report. I sent the beer as an accom'odation to Moore. I think I went down to the express office in a car to take it. I had numerous cases; I shipped to the chemist to Charlotte. I could not name the particular cases. I happened to keep the bill of lading in this case. I do not have any more here, I expect I have more, but not here. I saw Martin in Roanoke; I sent him a wire.

He didn't talk to me personally. He left the word here for me that he had information for me. I didn't wire him to come.. He asked that I wire where I would be. He left word for me at my home. I think I wired him after I got to Roanoke; I was in Roanoke. I wouldn't be positive about that. I went to Roanoke with Jimmy Moore. I didn't go by Dowdytown because it was away out of the way. I saw Martin and talked to him after he go there. He gave me a report on "Judge" Womack. I didn't know "Judge" Womack was on Charlie's bond. I only know it now, because I have your word for it. I didn't see Buckner, and Martin did not have a transaction about May Craig and his wife. I jumped in his automobile and took his key out, when I went down there. I didn't go in the barn. I did not see him after we left Burlington. He positively did not come to my house. I don't think I saw him any more until after this case. I don't think I called him over the telephone after the 23rd of January. I don't know if I swore in the former trial that the title of the automobile was dated the 28th of January. It was not delivered to me after the 23rd of January, not after the trip to Burlington. I did not swear to it in the last trial, because I positively had the car before I went down home. I didn't know Mr. Langley. I knew Mrs. Langley, at least she was at the house when we raided there, but he was not. I don't know that I could recognize her. I had this car when I went to my mother's in Harrisonburg, but I could not have gone in it. I said I had no way. I had the car fixed up after that. I gave $20.00 for it. Martin said he had one he would take $20.00 for; I didn't know it was as bad condition a sit was. I sent for it. It migh have been in the garage; I sent Huffstickler for it. I don't know that I had to pay $16.00 to get it out of the garage. I know Ernie Andrews and Nick Vaughn. I did not at that time. I didn't see Andrews when we raided. I didn't see Nick Vaughn. I never have seen Morgan Kivett until today. If so, I didn't know it. I didn't find it out that everyone of them had the reputation of being in the liquor business.

I later transferred to Winston, as well as I recall, the 14th day of June 1929. I would say I was there five or six months.
29 Made quite a few cases, a bunch in Stokes County. I said I didn't think Charlie Martin cashed that $15.00 check for me. I don't recall to whom I gave it. I wasn't at Dowdytown. I may have given it to Gus Dowdy, somebody I got to cash the check for me. It came back *im*sufficient funds. I was away from home. We both checked on the same account, that was why the check came back. I haven't seen the check but I am sure it is the one I signed.

I never made a case against Charlie Martin, Gus Dowdy, Clay Smith, Rube Frazier, nor Buford Gardner. I did not make a case against Dowdytown, it wasn't in my territory. I was over there asking information from Charlie Martin, all around North Carolina, that was my territory.

Redirect examination by Mr. HAMMER:

FUNK, continuing, says: There was no liquor in that car when we went on the trip to my mothers, if there was I didn't know it. I didn't search the car. I wouldn't have any use for it. I didn't drink it, positively I don't drink. He did not show me pits where he had 155 gallons hid at his home. I never saw a pit over there in my life. I heard there was a pit in the garage, after Mr. Gatewood raided him alone in March 1929. I did not know the real character of Charlie Martin, when I sent to my mother's home in Rockingham County. He seemed to be a likeable fellow, I took him at face value. It was some little time after I got the car, until I got the title to it. I phoned repeatedly to get the title. I called over there to Charlie about it.

Q. Do you know whether your wife called over there about that car?

(Government objects. Objection sustained. Exception no. 9.)

I phoned several times, and told her to call about the car. These phone calls would go out on your bill, naturally. I do not recall telling her any other time, except I do recall on this trip down there, they hadn't come, and were to be there early in the morning. I didn't check to see how many long-distance calls went from my place to Dowdytown and to Charlie Martin. I didn't count them. I don't think I ever charged up any of these telephone call as official business and got reimbursed. I would place a call, and didn't charge them to the deputy sheriff. I would take the charge. The would say, "I will call you later." I am not permitted under the rules and regulations to charge my personal calls to the Government pay roll.

Q. The diary that you keep, is one that explains your charges and expenses, when and where you are at all times, and that is furnished to the Government how often.

(Objection by the Government. Overruled.)

We make a daily report. Sometimes they accumulate several days, but they were supposed to go each day to the office. The copy of my data is embraced in this report.

(Objection by the Government. Overruled. Exception.)

I had a right to charge to the Government any official business and get reimbursed for it.

W. C. ANDREWS, witness for the defendant, being sworn, testified:

Direct examination by Mr. YOUNCE:

I live at Mount Airy, N.C., have lived there eleven years. In January 1929, I was manager of the Blue Ridge Hotel. I was there in active charge, on that date. I only know John S. Funk as I remem-

ber this occasion of his being in Mount Airy. Counsel handed witness paper, and he continued: This is the daily register sheet January 9, 1929. This is the original sheet of that date. John S. Funk registered at my hotel on that date. He signed the register sheet. It has been a rule for many years, I would relieve the clerk from twelve to one o'clock. It was between twelve and one. That is my writing. My recollection is that he came in during the dinner hour and registered. This shows that he only registered for a room. I was in charge at the time he signed up. I think there was a cash sheet turned in with that. That is the cash sheet [indicating]. That is marked "Defendant's Exhibit D", the cash report. The register shows for room and one meal. It doesn't show what meal. It might have been for supper or breakfast the next morning.

Mr. CARTER on cross-examination:

I don't recall that there was anyone with him. I don't know how I can remember this man out of the others coming into my hotel, but his smallness of size is one thing.

L. C. HUFFSTICKLER, witness for the defendant, being sworn, testified as follows:

Direct examination by Mr. HAMMER:

I live on Spring Garden Street, in this city, Greensboro. I went to Danville to get the automobile that John S. Funk had purchased from Charlie Martin. I don't remember the day. It taken me from 7:30 to after 9:00 o'clock to get it started, a couple of hours. I did not pay anything at all. I saw Mr. Funk pay Charlie Martin money on account of that car. It was $20.00. The payment was made out from Danville a few miles. I am an automobile mechanic. I am no relative of Mr. Funk's. I have been in court about drinking. I have never been charged or convicted of any crime. I spent the night of January 23, 1929, at Mr. Funk's house. No one but home folks and myself were there that night. I don't know how many there are in his family. He has children, and his wife was there. Charlie Martin did not come there that night with any other person, that I know of. No, sir. I slept just across the hall from Mr. Funk. My door was closed. I turned in sometime after twelve o'clock that night. I didn't see anybody there at all.

Cross-examination by Mr. CARTER:

I am a married man, and was at that time. I lived 1904 Spring Garden Street. I didn't live close to Mr. Funk. It was a couple of miles; I was boarding with my sister, near the ball ground on
31 Lee Street. My wife was in Wadesboro when this happened.
I was not separated from her, she was at her mother's. When this happened I was staying on Davie Street. Part of the time I was staying at a little hotel on Davie Street, and part of the time with Mr. Funk. I didn't have any special place to stay then. That is my signature [indicating—paper presented]. I can swear to this statement. I moved after this happened, 757 Chestnut Street, just

a week or so after this happened. Twenty dollars was paid for the automobile. He gave him $20.00. He gave him $20.00 and then gave him $5.00 to pay for the repair bill on the springs. You didn't give me time to answer the other day, to tell about the $5.00, $20.00 to start. He asked him about the repair bill on the springs. I may have seen Charlie Martin when I went for this automobile. I don't know.

Mr. CARTER. I ask this affidavit being exhibited to the witness be offered in testimony.

(Here the following colloquy occurred.)

Q. Mr. Hoffstickler, I ask in this affidavit if you didn't state that he paid $20.00 for the car and $5.00 for the repair bill, and paid it to Martin?

A. I guess so.

Q. And this statement was made in July 1929, that is the date.

Judge MEEKINS:

Q. Do you remember under what circumstances you made this affidavit?

A. I heard the conversation between Mr. Funk and Martin. He was to pay $20.00 for the car.

Q. Who got you to sign this affidavit?

A. I declare I couldn't tell you; I don't know.

Mr. CARTER:

Q. Mr. Hoffstickler, you are drinking whiskey this evening, aren't you?

A. No, sir.

Q. You do drink?

A. I take a drink occasionally.

Q. You went with Funk on the raid to Burlington?

A. Yes, sir.

Q. And spent the night on a lounge in his house?

A. On a davenport.

Q. You don't know who went in there that night?

A. Didn't nobody come in there, as I know of.

N. C. ALEXANDER, witness for the defendant, being sworn, testified as follows:

I live in Roanoke, Virginia. I am deputy prohibition administrator, western district of Virginia, the same position that Mr. O'Steen occupies now. In 1928 John S. Funk worked for me. In February or May sometime he was doing some undercover work in south Virginia for me. I have known Mr. Funk since the fall of 1923.

Q. What was his character as an officer?

(Government objects. Objection sustained.)

32 Q. What is John Funk's general reputation among the people who know him, among the officers with whom he worked, first as to truthfulness?

(Government objects. Objection overruled.)

A. His character is good, so far as I know. I never worked in this office here. Both O'Steen and myself worked under Mr. Merrick. The instructions issued by Mr. Merrick's office, as to how these samples shall be sent to the chemist's office are, get them to the chemist, send them, if not, send them by bill of lading attached.

Cross examined by Mr. CARTER:

These matters are handled by the deputy administrator in the district. After Funk did undercover work, I didn't see him for two years, I believe.

Miss RENA SMITH, witness for defendant, being sworn, testified:

Direct examination by Mr. YOUNCE:

I live at 302 Woodland Avenue, in Westerwood, in Greensboro. I have lived in the city 4 years. I know Mr. Funk, he lived across the street about a year. I knew his general reputation in that neighborhood. It was good.

Cross examination by Mr. CARTER:

He lived near me when he first came to Greensboro, 4½ years ago. So far as I know, the general reputation of which I have spoken is his reputation with these people in general.

A. TILLEY, witness for defendant, being sworn, testified:

Direct examination by Mr. YOUNCE:

I am assistant district attorney. I live at Mount Airy. I do not recall where I was about January 9, 1929. I recall that Mr. Funk came to Mount Airy along about January or February. I can't say just when. He came to see me. I know he came up there and talked to me about some sort of violation, I think it was about the seizure of an automobile.

Judge MEEKINS. That is the only time you recall seeing him?

A. Yes.

D. H. DOFFLEMEYER, witness for the defendant, being sworn, testified:

I am Federal prohibition investigator. I have been prohibition investigator eight years. I worked under Mr. Fullwaller and Captain Merrick. I know John S. Funk. I have worked with him. The first work I did in 1924 was with Mr. Funk, and I was associated with him from that time as long as he was an agent. I am still in the service. I never caught May Craig or Mrs. Charlie Martin, as an undercover man, and got liquor from them. Funk never approached me with any proposition to suppress any kind of
33 prosecution against those people. At times I was closely associated with him in his work, when in the service. I was on the Langley raid, when the Langley place was raided, with Funk and Moore. We found some beer or home brew and a small quantity

of liquor, very small quantity, in a jar. We brought the beer to the postoffice. Mr. Moore carried it in the post office, if I recall. Mr. Moore and myself initiated that search and seizure. I don't recall any specific instructions about what to do with reference to making reports of a raid, or seizure, to the office. I only know from experience.

Mr. CARTER on cross-examination:

I worked in the fall of 1928 at undercover work. In Alamance and Caswell counties. Earlier I worked around Greensboro, also in Salisbury. I don't think I went in Caswell. I was in undercover work the latter part of 1928. While Funk was with me he never approached me toward suppressing any prosecution against any man at any time or in any way.

December 16th, 1932, 9:30 o'clock a.m.

JOHN GALLOWAY, witness for the defendant, being sworn, testified:

Direct examination by Mr. YOUNCE:

My name is John Galloway. I am janitor in the Federal Building. I was janitor here while Mr. Funk was prohibition agent. I remember packing three bottles for him one day. He came there and asked me if I had a little box. I told him I didn't know, might could find him one, and I asked how big a box he wanted. He said he wanted one large enough to hold three bottles of home brew. We packed it up. It was taken from the safe in which the beverage were kept, yes, sir. He got it out of the district attorney's office. It was a little corrugated box; as near as I can remember, held about three bottles of beer. When it was packed I turned it over to him, and asked him what he was going to do.

(Objection by the Government. Objection overruled.)

He said he was going to send it to Charlotte to have it analyzed. I told him it wasn't necessary to send it to Charlotte. I could tell him how much kick there was in it. I didn't sample it, he wouldn't open it. He didn't let me test it.

Cross-examination by Mr. CARTER:

I lost interest in it after it was packed. That was the only beer I ever helped him pack. He got it out of the district attorney's office, he came out of there with it. I could not recognize those bottles, they all look alike to me. I just started to say that all the prohibition agents when they are in this office, we had to furnish boxes to them to ship whiskey and stuff to Charlotte.

In answer to Mr. CARTER:

I have furnished other prohibition agents boxes, very often. Before this time, and since this time, as long as they stayed in this

office. As long as Mr. O'Steen's office was in here. They would come down and hunt boxes. I helped them pack the boxes. I don't know what they did with it.

34 Miss RENA SMITH recalled.

In ans'er to Mr. Hammer said:

Yes, I testified yesterday that I lived close to Mr. Funk, in the early part of 1929, on Chesmut Street. I recall when he and his wife went up on a visit in Virginia I was sitting on the porch one night, while he was gone, and a light was in the house over there. I knew the family was away, the keys were left with us. When I saw the light, I phoned the police. Officers came but I don't know who they were. I sent the key which Mr. Funk left with me, over to the house by a nephew and he met them and they went in the house. The key was left with me. The light had not been burning theretofore. The lights burning were something unusual.

(Government objects. Overruled.)

I can't say I would know Messers. Floyd and Hayworth, police officers. I gave the key to the officers, because the house had been entered once before, when they were went away, and he left the key with me. I gave the key to one of my nephews, Roger Smith was his name, he gave it to the officers, and they went in, and searched the house. My nephew is not a witness here. I can't tell what he said. This was the middle of July 1929.

Tender of K. M. Brimm and Mrs. Frank McAdoo

Mr. Funk tenders referee in bankruptcy, Kenneth M. Brimm, and Mrs. Frank McAdoo as character witnesses for cross-examination if it is desired.

REBUTTAL TESTIMONY

VIOLA MAYS, witness for the Government, being duly sworn, testified:

Direct examination by Mr. CARTER:

I am a telephone operator. I was working at the telephone office January 1929, Greensboro, N.C. I made tickets when long-distance calls came in [witness handed paper]. I made that ticket or handled that call. I remember Mr. Funk putting in a call.

(Defendant objects. Objection overruled.)

Judge MEEKINS:

I know Mr. Funk, he said his name was Funk, when the call was put in. I do not know his telephone number.

By Mr. CARTER:

He was calling Danville, he was calling Charlie Martinl?

To Judge MEEKINS:

I have no independent recollection of that call except as I see it on there [paper].

Answering Mr. CARTER, she said: I would not know his voice over the telephone. I don't know his telephone number.

35 ED. BOWERS, witness for the Government, being sworn, testified:

Direct examination by Mr. CARTER:

My name is Ed. Bowers. I live in Danville, Virginia, the latter part of 1928. I knew Charlie Martin at that time, know Charlie pretty good. I did not sell whiskey for him. I run a restaurant in Danville at that time. I went with Charlie Martin from his place to the station to meet a train down there, and met Mr. Funk and a lady and went to Charlie's filling station. I recall seeing Nick Vaughn there on that occasion. It was along in January or February, I think, I am not sure. In 1929 I think. I do not know how long they stayed at the filling station or what became of them that night. I have never been at the home of Mr. Funk. As to what occurred that night, in the filling station: As well as I remember, Charlie Martin had a fruit jar of whiskey in a safe back there in the back. I remember that we came from the station and Charlie opened the safe and there John Goodson, and Nick Vaughn and three or four of us there, he gave us all a drink. Mr. Funk was there. I recall a trip with Martin to Roanoke. We saw Mr. Funk. Charlie went into the Patrick Henry Hotel and came out. He drove up to Hotel Roanoke. Pete Buckner and I sat in the car. They went in the Hotel Roanoke, and stayed about thirty minutes, came out and we drove back to Patrick Henry, and Funk got out. We came on back over to Danville.

To Mr. Younce on cross-examination he replied:

I have known Charlie Martin about seven years. We are good friends. We were not associated in business. At that time I had been running a restaurant in Danville five or six years. I didn't sell any liquor at all. I have been convicted on charges, I have been convicted of drinking lots of times. Probably more than twelve or fifteen times. Martin furnished me the liquor, sometimes, but not all. I could have five gallons on hand to take care of myself, but didn't. I never was convicted of anything else.

Q. You have been in the Christiansburg jail, haven't you?

(Objection by the Government. Objection overruled.)

I was charged with crime, and place in the Christiansburg jail. and was convicted.

To Judge MEEKINS:

The charge was driving a car under the influence of whiskey. I never had any trouble in court, except from the use of whiskey.

To Mr. Younce he replied:

The only time I saw Mr. Funk at the filling station was that night we met him at the train. That was after the trip to Roanoke, four or five months, I think, something like that I am not sure. We met the train down at the station in Danville. There was a lady with

Mr. Funk, I don't know if it was Mrs. Funk or not. It was dark. It has been three or four years ago, I couldn't recognize the lady.

She sat in the car. The railroad station was lit up, but there
36 are no lights on the side there in Danville, where the car sat.

I didn't recognize the lady. I know Nick Vaughn, have been knowing him four or five years. I do not remember anything in particular that was said or done on that occasion. I went back afterwards and took a drink. Nick Vaughn, John Goodson, a boy from Norfolk by the name of Larry, Charlie, and myself. Mr. Funk was in the filling station. I don't remember whether Funk was in the back in there or out in the front. I don't mean to say that he took a drink of liquor, because I could not say he did.

CHARLIE MARTIN recalled on rebuttal evidence.

Direct examination by Mr. CARTER:

It is not true I gave Mr. Funk certain information or made certain reports to him about "Judge" Womack on a trip to Roanoke. "Judge" Womack, at that time, was on my bond for $6,500.00, and I had just bought a place from "Judge" Womack, and I owed him; I think it was, when he sold me the place I paid $100.00 down and I owed him the balance. We hadn't fixed any papers anything about the place. The telephone calls and visits to me were not on account of information I was giving him. I never gave him any information on bootleggers, blockaders, and other people in the liquor business. Johnson was eight or ten miles from Dowdytown, on the county line. I was on the one line—he was on the other. I just had the privilege of using phone number 1621. It was in Frazier's name. It is generally known as to who was in the liquor business at Dowdytown.

(Defendant objects and moves to strike. Sustained.)

Mr. Funk told me. We were in Rube Frazier's filling station. He was there to get the brandy. He came to me and told me that Rube told him I had this brandy. I said, "Yes; I have it." We were in the filling station at that time.

(Objection. Sustained.)

Funk knew Frazier. He knew as well as I did who was selling liquor from the names he called. He didn't call names that wasn't selling. He called them all, he knew them personally, he called Frazier. Dowdy and others had the use of this telephone, no. 1621.

(Defendant objects. Objection overruled.)

There was liquor in the car when Mr. Funk and I sent to Harrisonburg, and he knew it because he told me he didn't want to take it to his home.

Martin, in answer to Mr. Hammer on cross-examination, said:

I broke in a filling station; yes, sir. I got four years for that. I have been arrested and convicted on two occasions since the former trial here. I have been convicted twice. I am not serving a term now; they released me the other night. I went home; the jailor released me. I don't know whether or not I have to go back.

37 Mr. Carter questioned witness, and received the following answers:

In 1921 I was given four years. That was before I knew Funk. I am thirty-four years of age. Four years of it have spent in the pen.

MACK FLOYD, witness for the defendant, being sworn, testified:

Direct examination by Mr. GEORGE A. YOUNCE:

I am an officer in the police department of Greensboro. I recall being called to the home of John S. Funk, as police officer. I went to his home. I don't recall the date, sometime before the first trial of this case. He was not at home. Mr. Hayworth, another officer, and myself went there on a call. Someone called and said there was a light in Funk's house. We went out, and the house was locked and the light burning in the front left-hand room. We could not get in. We borrowed a table knife from one of the neighbors and slipped between the lower and upper sash and moved the lock back and went in. We didn't find anyone in the house, but it appeared someone had been in. The drawers to the dresser were open and papers over the floor, general disorder, kind of disturbed, some linen on the floor that had been drug out of a closet. We did not find anyone there.

Cross-examination by Mr. CARTER:

This all occurred before the hearing. I don't know about the prosecution. I think it was sometime during the summer of 1929. I do not know how long Funk had been gone from his home.

Motion to dismiss and for a directed verdict

And this being all of the evidence introduced on behalf of the United States and on behalf of the defendant, Funk, the Government rested and thereupon the defendant, Funk, did likewise. And at the close of said evidence in the case the defendant, Funk, again renewed his motion heretofore made at the close of the case for the Government to dismiss the prosecution; and further moved for a directed verdict of not guilty; which motion the court denied; to which action of the court in declining to sustain said motion, and directing a verdict as prayed for, the defendant, Funk, excepted. Defendant's exception no. #10.

Motion to set aside verdict and for a new trial

And thereupon, the court, after instructing the jury, and after arguments of counsel, and after the jury had rendered a verdict of guilty, and before judgment thereon by the court had been rendered, the accused, John S. Funk, by counsel, moved the court to set aside the verdict of the jury and grant him a new trial upon

the ground that the verdict was contrary to the law and evidence.

38 Which motion the court overruled; and refused to set aside the said verdict and grant a new trial; to which action of the court the defendant, by counsel, excepted. Defendant's exception no. #11.

Motion in arrest of judgment

An thereupon, the defendant, John S. Funk, by counsel, moved the court in arrest of judgment.

Which motion the court likewise overruled; and to which ruling of the court, the defendant, John S. Funk, excepted. Defendant's exception no. #12.

Order settling bill of exceptions

To all of which several rulings of the court heretofore mentioned the defendant, John S. Funk, excepted, and tenders this his bill of exceptions, and prays that this may be signed, sealed, and enrolled, and made a part of the record in this cause; which is accordingly done, this the 28th day of April, 1933.

I. M. MEEKINS,
U.S. District Judge.

Service of within and foregoing bill of exceptions accepted. April 12, 1933.

THOS. C. CARTER,
Asst. U.S. Attorney.

[File endorsement omitted:]

39 In United States District Court

Judge's charge to the jury

GENTLEMEN OF THE JURY: The defendant, John Funk, stands indicted on a bill of indictment charging that he, together with one or more persons, entered into a conspiracy to commit a crime which is denounced by the statutes of the United States.

A conspiracy is an agreement between two or more persons to do or commit, or perform an unlawful act. There can be no successful prosecution of two or more persons for having entered into a conspiracy to do an unlawful act, unless and until there shall have been performed, after the conspiracy has been entered into, one or more overt acts by one or more of the conspirators, in the furtherance of the consummation of the conspiracy. To illustrate: Two or more citizens of Greensboro may conspire together, that is, agree together to meet at the entrance of this court room tomorrow morning to assassinate the clerk of the court as he enters his office. The conspirators separate, and nothing further is done. There is no crime committed. But if after two or more citizens of Greensboro agree

together today to meet here tomorrow morning at nine o'clock to assassinate the clerk of the court as he enters his office, that is to kill him, and after they separate, one of the conspirators goes to a hardware store and purchases a pistol for the purpose of executing or carrying out or consummating the crime, then all three would be guilty, although nobody was ever shot and no attempt was made to shoot or attempt to kill the clerk, and although one of the conspirators might not have known that the other conspirator bought the pistol. In this case the Government alleges that there was a conspiracy between the defendant, Funk, Martin, and others to violate the law of the United States, and that in furtherance of the conspiracy, Funk, the defendant, committed one or more overt acts in connection therewith. In other words, two or more persons cannot be prosecuted for imagining a crime, or for agreeing to commit a crime, for entering into a conspiracy to commit a crime unless one or more of the conspirators do something to carry out the conspiracy or agreements, by way of an overt act. The burden of this case is on the Government to satisfy the jury beyond a reasonable doubt; first that there was a conspiracy between the defendant Martin and others, an agreement between them to do the unlawful things charged in the bill of indictment; and second, the jury must be satisfied beyond a reasonable doubt that either the defendant, or Martin, or some other person connected with the conspiracy, committed some act in the furtherance of the conspiracy in looking to its consummation. And so you must find, first, that there was an agreement between this defendant and at least one of the others charged in the bill of indictment, and, second, that something was done by one or more of them to carry out the agreement as charged in the bill, and you must find both facts beyond a reasonable doubt, from the testimony.

The Government contends that you should find from this testimony and beyond a reasonable doubt, that there was an agreement between the defendant, Funk, and the other conspirators alleged in the bill, and that beyond a reasonable doubt you should find that the defendant, Funk, himself, and other conspirators alleged in the bill performed not one overt act but a number of overt acts, committed for the purpose of carrying out, or in furtherance of, the conspiracy. In support of its contentions, the Government has offered you the testimony of a number of witnesses, beginning with the witness Martin, and the Government has sought to corroborate the witness Martin by the witness Vaughn and the witness Andrews, and a number of other witnesses, with regard to various transactions or overt acts by the defendant Funk in the furtherance of the conspiracy alleged. The Government calls attention to the facts of the intimacy as established by the evidence, as the Government contends between the defendant Funk and the coconspirator, Martin, call attention to the fact that there were any amount of telephone calls that went from the phone number of the defendant Funk, at his residence, to the residence and business phone and

other phones of Martin. The Government contends that most of these messages, if not all of them, were had by reason of the fact that the two conspirators, defendants Funk and Martin, were endeavoring to carry out the unlawful agreement charged in the bill. The Government calls attention to the fact that defendant Funk, on the witness stand, did not deny that he paid for those various calls, they having been charged to his residence telephone. The Government calls attention to the fact of the further evidence of the intimacy between these parties, that the witness Martin on one occasion made defendant Funk a present of an automobile and that there was a trade or an exchange of pistols. The Government calls attention to the fact of the visit to defendant's (Funk's) mother; in which the defendant took his wife, in Martin's automobile, Martin and his wife being present therein and drove a long distance to Harrisonburg, Virginia, where a visit was paid to Mrs. Funk, defendant Funk's mother; calls attention to the fact of the visit of the witness Martin to Roanoke, Virginia, accompanied by a man named Bowers and possibly others, and that there the witness Martin made contact with defendant Funk at Patrick Hotel, that they left Patrick Henry Hotel, and got in an automobile and drove to Roanoke Hotel, that defendant Funk went in an automobile and drove to Roanoke Hotel, that defendant Funk went in the Roanoke Hotel with witness Martin and remained there one half hour or more in conference. Government calls attention to the fact, that defendant Funk had a transaction with another person by the name of Fogleman who had been in trouble about liquor and was at the time a driver for the Government officers, and that he became indebted to this man Fogleman in the sum of $500.00, and gave his note or duplicate note here in the court room just before Fogleman went away to serve sentence, having made the note to Fogleman's wife, the Government arguing that this intimacy between Funk and these people should aid you in reaching a righteous conclusion in this case, and should lead your minds to the conclusion, and beyond a reasonable doubt, that the defendant was guilty of entering into the conspiracy alleged, and performed one or more overt acts in the furtherance thereof. The Government calls your attention to the evidence brought out by the transaction alleged to have taken place between Funk, defendant, and the witness Vaughn who met Funk in the town after some distribution of the passengers in the car, and the witness went to King Cotton Hotel and Martin told witness Vaughn he would have to pay $150.00 to pay Funk for protection. Witness said he had only $120.00, but Martin said he had the other $30.00; calls attention to the transaction down at Burlington or Graham, the Government alleging in furtherance of this conspiracy and as a part of his duty, defendant Funk called witness Martin over the telephone and said, "Don't take that load of liquor to Graham. The officers are going to make a raid and I have to go with them"; to the testimony of Martin that he made arrangements not to take the liquor to Graham but hid it at some place and drove on down without the liquor; that the defendant, Funk,

refused to enter a barn for the purpose of searching, that he had no authority to do it; calls attention to the evidence in the case offered by it, that subsequent to that the deputy sheriff of Alamance County wrote a letter to defendant Funk in which
41 he told him, "We got the man in the automobile who gave us the laugh last Wednesday night", calls attention to the fact that that letter found its way into the possesion of Martin the witness, who took it to the witness Andrews, and Andrews testified that he read it and kept it and had it, and that was the letter, and that thereafter the demand was made on him through Martin, to pay Funk a certain sum of money which the witness Andrews says he refused to pay. The Government calls attention to the fact that here was a transaction alleged to have taken place between Funk and other officers of the Government with regard to search and seizure on the premises and property of a man named Langley. As a result of that a quantity of beer was found, two cases, I believe; that Martin testified that Funk agreed to cover up that case and protect Langley, for $150.00; that he got the $150.00 and paid it to the defendant Funk, from Langley; that thereafter the defendant Funk, together with himself fixed up three phony bottles of beer, put some malt and meal and water in it and shook it up and sent it to the Government chemist at Charlotte, who returned an analysis of less than one half of one percent; the Government contending that that was a part of the scheme, overt act and in furtherance thereof on the part of the defendant Funk to protect Langley, for a consideration and price. The Government calls attention to the fact that subsequently a part of the Langley raid of beer was sent to the chemist at Charlotte, two bottles, and that analysis showed alcoholic content by volume, was in excess of 5%. The Government calls attention to the fact that it showed by the testimony, and asks that you should accept it, that the initial step in the furtherance of this conspiracy after it was entered into, was that defendant Funk agreed with the witness Martin to protect witness Martin's wife and wife's sister against a violation that the defendant Funk represented was made on the part of Mrs. Martin and her sister, Mrs. Craig, in that they had sold agent Dofflemeyer two pints of whiskey, or a pint of whiskey, and he could get it hushed up for $200.00; that he levied tribute on his wife's sister of $100.00, furnished $100.00 himself, and paid to Funk, and there was no prosecution. The Government calls attention to the testimony of Dofflemeyer, that he never made any contact with these two women, never purchased any whiskey from them. The Government arguing that this conspiracy was entered into for the purpose of ——— on one or more or all of these occasions to which I have directed your attention. The Government says that on that testimony, on that state of facts, that it is your duty to return a verdict of guilty; and I charge you, gentlemen of the jury, that if you believe from the testimony in this case, or upon all the testimony, that the defendant, Funk, entered into this alleged conspiracy with Martin, and you are further satisfied or convinced beyond a

reasonable doubt, on all the testimony that Funk after entering into the conspiracy, did one or more overt acts alleged, it is your duty to return a verdict of guilty; otherwise to return a verdict of not guilty.

Defendant Funks says that is what you should do, that you should return a verdict of not guilty, for that he is not guilty of the charges alleged against him, that he is not guilty of any conspiracy in the first place, and, in the second place, he committed no one of these acts that the Government has sought to establish as evidence of guilt. When you come to consider this case in the jury room, I charge you that it is your duty, first to fix in your minds that the defendant Funk is presumed in law to be innocent and that presumption of innocence began when the grand jury returned a true bill in this case, and it has continued from then until now and should
42 continue from now until you decide this case, ever present in your minds, unless from the testimony you are convinced beyond a reasonable doubt, that the defendant is guilty, in which event the presumption of innocence will be removed, and the presumption of guilt will obtain. Every citizen of this Republic charged with crime is presumed in law to be innocent until the contrary is shown beyond a reasonable doubt. Under the old English system the reverse was the rule. The Crown charged a subject with crime; the person or subject charged with crime was presumed to be guilty until he proved to the satisfaction of the jury that he was not guilty; but under our system, and I repeat it, the reverse is the rule. Every citizen of this country, white or black, rich or poor, male or female, charged with crime, is presumed in law not to have committed the crime, and the presumption stands until a jury is convinced by the testimony beyond a reasonable doubt that the person charged is guilty; then of course the presumption is removed.

The defendant denies the charge of criminal action on his part, and it stands denied until it is established by a verdict of a jury, based on the evidence and conviction on the evidence beyond a reasonable doubt that the defendant is guilty. Defendant Funk relies on the presumption of innocence and says you should ever be mindful of that, and I charge you, you should.

He further relies on the fact that he has shown a good character here in this case, by two or more witnesses, and could have shown a good character by a dozen or more, but for the fact that the Court ruled that two witnesses as to character was sufficient, provided the other witnesses as to character were tendered to the Government for cross examination, which was done in this case. I call your attention to the fact, gentlemen, that two or more witnesses, I think three, were permitted to testify as to the good character of the defendant, Funk. There were a number of other witnesses, among them very prominent citizens, which were tendered to the Government for cross examination as to the defendant, Funk's good character, and everyone of those witnesses, one after another, you will bear in mind, would have taken the witness stand and told you that

the defendant Funk is a man of good character, if the Court had permitted them to do it. So you have in the case evidence of good character of the defendant Funk by at least a dozen upstanding citizens of this and other communities. That is substantive evidence, and in itself may raise a reasonable doubt of the defendant's guilt, and if it does, the jury would be warranted, and in fact it would be the duty of the jury, if a reasonable doubt of the defendant's guilt was raised, to give the defendant the benefit of the doubt and return a verdict of not guilty. He contends that if you give him the benefit of that testimony of good character, coupled with the presumption of innocence which the law places about him, that would raise a reasonable doubt in your mind. If it does, then he is entitled to acquital, and you should so return your verdict. If it does not, then you pass on from the presumption of innocence and the good character evidence, and consider the other testimony in the case, and see whether anything else in the case in connection with the presumption of innocence and evidence of good character creates a reasonable doubt in your mind. Now, he hays you ought to acquit him because this evidence is not worthy of belief, he says the Government is entirely dependent upon the testimony of Charlie Martin, who is a self-confessed criminal, corroborated by a number of other self-confessed law violators. He says that if you take out of this case the testimony of Charlie Martin and the other law violators who have testified in corroboration of him, that you haven't enough left to justify you to convict him, under the rule laid down by the court. He contends, and I so charge you, that it is your duty
43 to accept with a degree of caution the testimony of the witness Martin. He is a self-confessed conspirator, although he is not charged in this bill of indictment, so when you come to pass upon the value or probity of his testimony, it is your duty to remember the character of the person who gave the testimony. But, after you have done that if you are satisfied that he spoke the truth, it is your duty to give his testimony the same weight and value as if he were the best man in the community. The defendant says you ought not to believe him, because he is not only a man of bad character but in addition to that he had a very strong motive to testify as he did. He points out and contends that the motive established here is: he would get immunity by reason of his testimony; that Martin understood from the beginning that if he became a witness for the Government and told all of this transaction that the Government would not prosecute him, and that is true, that is one reason he is not being prosecuted; the defendant contends that Martin traded his liberty in exchange for the testimony and that was the motive of a bad man to get a good man in trouble. Defendant contends that you ought not to accept the testimony of a man of the character of Martin, superinduced by the compelling or strong motive that he would escape trouble if he told, as he has, of this transaction with regard to the defendant Funk. In that connection it is my duty to say to you, notwithstanding the fact that a

witness may have been convicted of a crime, as in this case was Martin, he can tell the truth, and if he makes a statement on the witness stand which is corroborated and substantiated by evidence clear and convincing to a jury, then the jury would not be privileged to ignore such testimony simply because he was a former convict. The question is whether he told the truth and if you are satisfied beyond a reasonable doubt that the defendant is guilty, then return a verdict of guilty, otherwise, a verdict of not guilty. If the witness Martin did not tell the truth in this case, then defendant is entitled to a verdict of not guilty, and I so charge you.

The defendant points out to the jury and contends that you ought to consider the testimony of the witness Martin is not worthy of belief, because, the defendant contends, it is inconsistent. The defendant says that if he had agreed to give Martin and his associates the protection Martin said he agreed to give them, that Martin and his associates would be up here trying to protect him rather than destroy him, because, he contends and argues, that if these men were in the liquor business and the Government officers were giving them protection that these would be the last to complain about him.

He argues that Martin's associates being here and backing him by their testimony in this case in evidence, or a reasonable deduction from the evidence, to warrant the jury to see that their conduct clearly is inconsistent with their alleged agreement with defendant Funk. In other words, he contends that if they got what they said they did, protection from Funk, why should they be here complaining about it? He argues that they got none, and he entered into no conspiracy to give them protection, and the whole fabric of this charge is based upon Martin's effort to escape prosecution, and is his motive in this case, and that aMrtin had his associates, Vaughn, Andrews, and others, for the same motive come in and corroborate him. That is his contention, and his analysis of the testimony. He contends that their own self-interest would prompt them to continue with their alleged arrangement, and keep the protection rather than turn against him. The defendant further contends that this evi-
44 dence as to his intimacy with the witness Martin and these other people is a fact. He does not deny he was intimate with Martin. He admits it, and that he was in frequent contact with him, and that there were social relations between the families; but he contends that that is one of the methods in the line of his duty, being an undercover agent at one time, prohibition enforcement officer at another, various methods have to be resorted to, of ingratiating one's self into the good graces of suspects, leading them to believe they are making contact with a friend, in order to catch them violating the law. That is his explanation of this intimacy, and the fact that he did not know Martin was a violator of the law when he first made contact with him.

These are the contentions of the defendant. I have given you as far as I recall, his position in this case, his attitude towards the Government's testimony, his argument as to how you should analyze

it and accept it, in other words, his defense and answer to the testimony adduced in your hearing by the Government.

In addition he took the witness stand in his own behalf. I refer again to the old English system. There was a time when a subject of England charged with crime could not take the witness stand, upon the theory that a man would be tempted to commit perjury, therefore temptation should not be placed in his way, this was I think a very cruel rule; but under our system a defendant charged with crime may take the witness stand and under oath deny charges; and our rule is more humane still, if a defendant fails to take the witness stand, his failure to do so must not be construed by the jury as evidence of his guilt. That need not trouble us in this case. With the temptation to speak falsely before him in order to escape the charge, the jury is charged with the duty, and I call it to your attention, to weigh the testimony of the defendant with grains of allowance, with caution for the reason that he is the defendant and vitally interested in the outcome of your verdict; but after you have done that, gentlemen, if you think that the defendant spoke the truth as to all the material facts charged against him, as to all allegations laid against him, then it is your duty to give the defendant's testimony the same weight as if he were a disinterested witness. You heard what he said. You saw him on the stand, and his demeanor. He stated he never took a penny from any person throughout his career as revenue officer he performed his duties to the best of his ability, and so far as he was conscious he has not committed an unlawful act intentionally. Then he specifically denies the overt acts sought to be proved by the Government. He closed his case by offering evidence of good character by a number of witnesses.

Gentlemen of the jury that is the case of the defendant, and that is the case of the Government.

If there is any matter connected with the case that is not entirely clear in the mind of any juror, or any juror would like to ask the court for any information on any point in connection with the case, I shall be glad to have you do so, and I shall be glad to aid you and assist you in any way I can. If you become confused in any way, or become uncertain about the testimony, you are at liberty to advise the court.

On the question of what the testimony was, I omitted to tell you that you are the sole judges of that, what the counsel for the defendant said, what the counsel for the Government said is only proper for your consideration insofar as the statements of either tend to refresh your recollection and thereby give you a better grasp of what it was. But if your recollection is contrary to that of the district attorney or the attorneys for the defendant, or the court, follow your own recollections, because you are to find the facts in this case, and based upon the facts you return your verdict, and your verdict should reflect the truth.

It is an important case, important for the Government, and for society and the public, and important for the defendant, therefore you should not be influenced by any prejudice against this defendant

that you might possibly have or that might have been injected into this trial in your presence, nor should you be influenced by any esteem or compassion for the defendant and his family, because these matters are not for your consideration. Just simply in cold blooded, common-sense, and conscience, pass on this evidence, reach your conclusions and reflect the same in your verdict, of course, being mindful of the test the court has told you you must apply to the testimony and of the rule you must be guided by in that your verdict must be reached from the evidence.

In other words, gentlemen, the best rule I know to consider a case is laid down in the 15th verse of the 19th chapter of Leviticus: "Thou shalt do no unrighteousness in judgment. Thou shalt not honor the person of the mighty, nor respect the person of the poor, but in righteousness shallt thou judge thy neighbor."

It has been called to the attention of the court that the wife of defendant Funk was offered as a witness for him, and that she was denied the privilege of testifying. The defendant's counsel has asked me to explain that to the jury. In the Federal courts of this State the wife cannot voluntarily or involuntarily testify for or against her husband. When Mrs. Funk was tendered as a witness the Government objected and the court sustained the objection. So you need not give that any consideration whatever, because it has no bearing on the case. None of us know what she would have said and consequently whatever she knows about this case is not for the jury, and for the reason just stated.

Retire gentlemen and return your verdict.

To the foregoing charge there was no exception.

I. M. MEEKINS,
U.S. District Judge.

46 In United States District Court

Sentence

Whereupon the court sentenced the defendant, John S. Funk, to serve a term of one year and one day in the Federal penitentiary at Atlanta, Georgia; to the action of the court in rendering said judgment and sentence on the defendant, the said defendant, John S. Funk, excepts, and appeals in open court to the United States Circuit Court of Appeals for the Fourth Circuit. Defendant's exception *no.* #13.

In the United States Circuit Court of Appeals for the Fourth Circuit

UNITED STATES

vs.

JOHN S. FUNK AND A. S. (GUSS) DOWDY

[File endorsement omitted.]

Assignment of errors by defendant John S. Funk

(Filed April 12, 1933)

And now comes John S. Funk, appellant, and in connection with his appeal says that in the record, proceedings, and judgment aforesaid error has intervened to his prejudice, to wit:

1. The court erred in denying defendant's written motion to quash the bill of indictment in this cause as filed and set out in said record.

2. The court erred in denying defendant's motion for a bill of particulars.

3. The court erred in permitting May Craig, over the objection of Funk, to testify to alleged conversations, not in the presence or hearing of Funk, between the witness and C. C. Martin touching the sale of liquor to Dofflemeyer and the preparation to
47 bribe and the bribery of Funk, at Roanoke, Virginia, on or about September 28, 1928, and which antedates the formation of any alleged conspiracy and which was not in furtherence thereof.

4. The court erred in permitting the witness, Pete Buckner, to testify over the defendant's objection to the effect that, "He (Martin) told me (Buckner) he was going up there (Roanoke) to try to get a liquor case smothered out, the he was going to pay to Funk money to get him to smother it out," which conversation occurred prior to the trip to Roanoke or enroute thereto and not in the presence or hearing of the defendant, Funk, and which antedates the formation of the alleged conspiracy, and which was not in furtherence thereof.

5. The court erred in failing to withdraw the case from the jury, dismiss the action, and direct a verdict in favor of the defendant, upon the close of the testimony for the Government.

6. The court erred in refusing to permit Mrs. John S. Funk to testify as a witness in behalf of her husband, John S. Funk.

7. The court erred in refusing to permit Mrs. John S. Funk to testify under oath to the facts as she knew them of the alleged sundry visits of Martin and others to her home, and of her visit to his home, and with him and others to Harrisonburg, Virginia, and to contradict their statements, and to explain or tell who made the various telephone calls from her residence to Martin and others, charges for which appeared upon her husband's telephone bill, and were introduced by the Government as evidence against the defendant; and refused to let her explain or contradict various transactions
48 and conversations that witness Martin and other Government witnesses testified took place in her presence and with her and her husband.

8. The court erred in sustaining the objection of the United States district attorney and refusing to permit the defendant, John S. Funk, to explain and testify with respect to the trip to Martins-

ville, Virginia, with Guss Dowdy, and on which trip C. C. Martin accompanied them.

9. The court erred in sustaining the objection of the district attorney and in refusing to permit the defendant to testify with respect to certain charges for telephone calls appearing upon the bill of the telephone company, and introduced by the Government, and to show that some of these charges were made by his wife and not by the defendant.

10. The court erred in overruling motion of defendant, Funk, made at the close of all of the evidence to dismiss the prosecution for the reason that the proof was insufficient to sustain the allegations of the indictment; and that the evidence showed that if any conspiracy was formed it was formed in the State of Virginia; and in failing to direct a verdict of not guilty.

11. The court erred, after a verdict of guilty had been rendered and before judgment had been entered, in refusing to set aside the verdict of the jury and grant the defendant a new trial upon the ground that the verdict was contrary to the law and the evidence.

12. The court erred again after overruling defendant's motions aforesaid in refusing to sustain the motion of the defendant in arrest of judgment.

49 13. The court erred in rendering the judgment and sentence upon the said Funk as set out in said record.

GEO[illegible]E A. YOUNEE,
ALLEN ADAMS,
Greensboro, North Carolina.
CHAS. A. HAMMER,
Harrisonburg, Virginia.

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Exceptions to bill of exceptions

(Filed April 14, 1933)

Now comes J. R. McCrary, United States attorney for the middle district of North Carolina, on behalf of the United States in this case, and files the following exceptions to the bill of exceptions of the appellant as served April 12, 1933.

Exception no. 1

On page fourteen of said bill of exceptions beginning at the period in line eleven, strike out all of the remainder of said paragraph and substitute therefor the following: Why I offered that check to Funk

instead of giving him the money, if I had the money in my pocket. I told him here it is. I said if you want it take it, you are right here at the bank. These people didn't know me. No, sir; the bankers didn't know me.

Exception no. 11

On page eighteen of the record, in line three, the following notation is made as to any objection by the defendant. Strike out
50 line three and insert in lieu thereof the following: "Defendant objects to fixing." Overruled for the present.

Exception No. 111

On page twenty-one of the bill of exceptions, in the first line after direct examination that which appears in parenthesis as follows: "Served time in Atlanta", that should be stricken out as it does not appear in the record, or in the stenographic transcript of the evidence; also strike out in said paragraph beginning in line four, the following, which appears in parenthesis, "Testified in former trial he was in the raid" for the reason that same does not appear in the record and in the stenographic transcript of the evidence, and is an insertion by counsel and not evidence.

Exception No. IV

In the third line next to the bottom of page twenty-five strike out December 1, 1928, and insert in lieu thereof December 18, 1928.

V

In line eight from the bottom, on page twenty-six, strike out the figures 145, and insert therein .45.

VI

On page thirty strike out the following: "Over the objection of the defendant Funk as aforesaid, the following questions and answers were permitted by the Court," and in explanation the following occurred:

Question by Mr. Carter. Direct examination of Pete Buckner.

Q. Did he state to you what his purpose of the trip to Roanoke was.

(Defendant objects. Objection overruled. Exception.)

Q. Did you accompany him to Roanoke?

A. Yes, sir.

Q. Did he tell you what he was going to Roanoke for?

A. Yes, sir.

Q. What was it?

A. He told me he was going up there to try to get a liquor case smothered out—said he was going to pay Funk money to get it smothered out.

Q. Did you go up there with him?

A. Yes, sir.

Q. Did you see Mr. Funk?

A. Yes, sir.

Q. Under what circumstances did you see him?

A. I saw him in an automobile.

Q. Whose automobile?

A. Mr. Martin's.

It will be observed that the defendant's objection was to the question: Did he state to you what his purpose for the trip to Roanoke was? No other objection appears, or was taken by the defendant to any other question or answer by the witness. Strike out all that appears on page thirty of said bill of exceptions beginning with the question "In line nine" and down to line sixteen, and substitute the questions and answers as above set forth.

VII

On page thirty-one of said bill of exceptions, in line four, after direct examination, beginning with "his" and ending with representations, strike same out and substitute the following: "His number was 3094-J." Witness exhibited certain telephone tickets. Yes, sir. These represent long distance telephone calls.

51

VIII

Strike out line eight from the bottom of bill of exceptions on page thirty-two, after the words "Mr. Carter" and insert in lieu thereof, "This was the only conversation I had with Funk while they were present."

IX

Strike out on page thirty-two, at the bottom of the page, all of same after the word, "Judge Meekins", and insert in lieu thereof the following: "As to why the officers were in my room I don't recall whether I met Trexler over there. There wasn't any arrangement that I would call up Funk. As to why they were in my room, I was to meet Mr. Trexler over there. I was to come over there and meet him, and as to why I come to meet him at that time, I had already told the fellow in Merrick's office about Funk."

X

Strike out the last line on page thirty-three after the words "Judge Meekins" and insert the following: "I took down what I heard. I could hear distinctly."

XI

Insert in the last line of paragraph on page thirty-five, being paragraph of direct examination by Mr. Carter, the following: "Showing letter to witness, the witness replied, I wrote the letter January 28th."

XII

Insert after the period in line ten, on page forty-seven, the following:

Q. Don't you know you arrested Gus in the prosecution of Jim Riddle, highjacker?

A. 165 gallons.

Q. Yes?

A. As the instigation of your office.

Q. You knew Gus was in the liquor business?

A. Yes, sir; certainly.

Q. Two years before that time?

A. Gus had the reputation of being in the liquor business. As to knowing it, I didn't know it."

XIII

On page forty-seven of said bill of exceptions, in line nineteen, after the word "Moore", insert the following: "Passing the buck to me."

XIV

Strike out on page sixty-two of said bill of exceptions, in line three at the bottom, after the word prosecution and down to the word jurisdiction, in the second line on page sixty-three of said bill of exceptions, for the reason that the defendant made a plain motion for a directed verdict, which appears in the record, and that no objection was made at any time during the trial as to the jurisdiction of the court.

The following exceptions are made to the defendant's assignment of errors:

52 First. Number one of said assignment of errors should be stricken out, as no motion to quash the bill of indictment was made.

Second. That the second assignment of error should be stricken out, as no motion was made as to a bill of particulars.

Third. That assignment number seven should be stricken out for the reason that the same is improper as stating that which does not appear in the record, as to what the witness would testify to.

Fourth. That assignment of error number eight is not tenable and not supported by the record as the defendant Funk testified as to his trip to Martinsville, with C. C. Martin, and the objection

by the Government, which was sustained, purely on the ground that counsel for the defendant had asked improper leading questions.

Fifth. That as to assignment of error number ten, the record does not support the said assignment in respect to a conspiracy being formed in Virginia, and questioning the jurisdiction of the Court.

Now, therefore, the United States attorney for and on behalf of the United States, submits the foregoing exceptions to the appellants bill of exceptions, and prays the Court that said bill of exceptions be corrected accordingly.

Respectfully submitted for the United States Attorney.

THOS. C. CARTER,
Asst. United States Attorney.

Service of the foregoing exceptions accepted.
Copy received this 14 day of April 1933.

ALLEN ADAMS,
Attorney for the defendant, Funk.

53 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Stipulation as to bill of exceptions

Filed April 21, 1933

It is stipulated and agreed by counsel for appellant and appellee that appellee's exceptions to the bill of exceptions numbers one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, and fourteen be, and the same are allowed and agreed to, and the clerk of the court will accordingly reform the bill of exceptions filed in this case in accordance with said exceptions of the appellee.

This the 21st day of April 1933.

ALLEN ADAMS,
Attorney for appellant.
THOS. C. CARTER,
Asst. United States Attorney.
Attorney for appellee.

Whereupon the said bill of exceptions were reformed and corrected in accordance with the provisions of the aforesaid stipulation, which said corrections and reformations were made before the said bill of exceptions were presented to the trial judge for his approval and signature; and said bill of exceptions as signed by the trial judge are in accordance with said stipulation.

54 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Notice of appeal

Filed March 15, 1933

To the United States of America or its attorney of record

You are hereby notified that the defendant, John S. Funk, appeals from action and judgment of the court in this cause to the Circuit Court of Appeals based upon assignment of errors herewith filed.

This 14th day of March 1933.

GEO. A. YOUNCE,
Attorney for defendant.
THOS. C. CARTER,
Asst. United States Attorney.

Service accepted and copy received this the 15th day of March 1933.

55. In United States District Court

[Title omitted.]
[File endorsement omitted.]

Petition for leave to prosecute without prepayment of costs

Filed Jan. 6, 1933

John S. Funk, the above named defendant, being duly sworn, says:

That he is a citizen of the United States of America, and that he was at the December Term 1932, in the United States District Court for the Middle District of North Carolina, at Greensboro, convicted therein of the crime of conspiracy, etc., and thereupon moved the court to set aside the verdict and arrest the judgment for errors to be assigned; when said motion was overruled and the defendant sentenced to the Atlanta Penitentiary for a term of 1 year and 1 day and from said judgment your affiant appealed to the Circuit Court of Appeals at Richmond, Virginia; that because of his extreme poverty he is unable to pay the costs of said appeal or writ of error, or to give security for the same, and that he verily believes that he is entitled to the redress he seeks by such appeal or writ of error, and that the appeal is taken and writ of error applied for in good faith, and therefore prays the court to grant him an order directing that he be allowed to prosecute said appeal without being required to prepay fees or costs, or for the transcribing, stenographic report and copy of same, and printing of the record in appellate court, or give surety therefor.

JOHN S. FUNK, *Affiant.*

Sworn to and subscribed before me this 21st day of December 1932.
[NOTARIAL SEAL] JOHN C. STRICKLAND, *N.P.*
My commission expires Jan. 26, 1924.

56 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Order granting petition

Filed Jan. 6, 1933

This cause coming on to be heard and being heard, and it appearing to the court that the defendant, John S. Funk, was heretofore convicted in this court of the crime of conspiracy, etc., and sentenced to the penitentiary at Atlanta, Georgia, for a term of 1 year and 1 day; and it further appearing to the court that the said John S. Funk has appealed to the Circuit Court of Appeals at Richmond, Virginia, from said judgment, and has asked for a writ of error in said cause; and it further appearing to the court that from the affidavit of the said John S. Funk he is unable to prepay the fees incident to his appeal or give security therefor on account of his extreme poverty, and that said appeal is taken in good faith.

It is, therefore, ordered, adjudged, and decreed by the court that the said John S. Funk be and he is hereby allowed to prosecute his appeal and sue out his writ of error in this cause to the Circuit Court of Appeal or any appellate court without prepaying the fees incident thereto for the transcribing, stenographic report and copy of same, and printing of the record, or for any costs for which he would be required to pay, or without giving security therefor.

I. M. MEEKINS,
United States District Judge.

57 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Order allowing appeal

Filed April 8, 1933

Upon the coming in of the jury and the rendering by the jury of a verdict of "guilty", December 16, 1932, the defendant, John S. Funk, moved to set aside the verdict of the jury and for a new trial and also made a motion in arrest of judgment.

Motion overruled. Defendant Funk excepts, and appeals in open court to the Circuit Court of Appeals for the Fourth Circuit.

Sentence imposed as set out in the record.

Defendant Funk excepts and appeals.

Notice of appeal, service of which was duly accepted, duly filed in the office of the clerk of the district court.

Said appeal be, and the same is hereby, allowed.

It is ordered that the defendant Funk have thirty days in which to serve and file bill of exceptions, and the Government ten days thereafter within which to file exceptions to said bill of exceptions. Jurisdiction of this cause is specifically held and retained by this court for the purpose of settling and allowing the bill of exceptions.

58 I. M. MEEKINS,
U.S. Judge.

Entered at Raleigh, March 16th, 1933.

In United States District Court

[Title omitted.]

Order extending time to perfect appeal

March 9, 1933

For good cause shown, it is ordered that the time for the defendant, John S. Funk, to perfect his appeal and same be filed in the Circuit Court of Appeals, Richmond, Va., be and the same is hereby extended thirty (30) days from March 16, 1933.

This 9th day of March 1933.

I. M. MEEKINS,
Judge, U.S. District Court.

59 Whereupon citation was signed by the aforesaid trial judge on the 28th day of April 1933 (service of which was duly accepted by the United States Attorney on the 1st day of May 1933), which said citation is in words and figures, as follows, to wit:

[Citation in usual form filed April 28, 1933, omitted in printing.]

60 In United States District Court

December 15, 1932

Minute entries of trial

[Title omitted]

Case is called for trial and the defendants appear. Upon motion of the district attorney it is ordered by the court that the defendants be arraigned. The defendants are arraigned at the bar and in their own proper persons enter the plea of not guilty, and of this they put themselves on their country and the United States through the district attorney doth likewise.

61 Thereupon it is ordered by the court that a jury of good and lawful men come by whom the truth of the matter may be better shown.

The following jurors, to wit: Ben Gibson, J. B. Roberson, T. H. Masten, Andrew Strader, A. H. Oakley, J. H. Woody, C. D. Oakley, T. E. Farrell, J. T. Wood, A. M. Deviney, J. P. Dalyrimple, A. F. Andrews, having heretofore been chosen, tried and sworn in in manner and form provided by law; are questioned and passed by the United States and the defendants, and are now duly impaneled to try this case.

Twenty-three (23) U.S. witnesses are called and sworn and testimony given.

The court charges the jury as to defendant Dowdy and directs them to return a verdict of not guilty as to this defendant.

Plaintiff rests.

Defendants moves for a directed verdict of not guilty as to defendant, Funk.

Motion denied. Defendant excepts. Arguments of counsel heard. The court charges the jury and directs them to return a verdict.

The jury in the above-entitled case now return from the jury room and being questioned by the clerk under directions of the court and in the presence of the defendant answer that they have agreed, and for their verdict say that the defendant, Funk, is guilty thereof in manner and form as charged in the bill of indictment.

62 The District attorney moves for and prays the judgment of the court. The defendant moves to set aside the verdict and for a new trial for the reason that said verdict is against the law and evidence, and for newly discovered evidence.

Motion denied. Defendant excepts. No. 13.

IN UNITED STATES DISTRICT COURT

Judgment

December 16, 1932

The defendant being present in court, it is ordered and adjudged that the defendant be placed in the custody of the Attorney General of the United States, to be assigned to such place as the Attorney General may designate, preferably the U.S. prison at Atlanta, Georgia, for a term of one year and one day.

The defendant in open court gives notice of appeal to the Circuit Court of Appeals.

Bond fixed at $2,500.00 (bond executed and approved and the defendant released from custody pending said appeal).

Memorandum Under Rule 14, Section 7

Notice of appeal dated March 14, 1933, and filed in clerk's office March 15, 1933.

Order allowing appeal dated March 16, 1933, and filed in clerk's office April 8, 1933.

Citation dated April 28, 1933, service accepted May 1st, 1933, and filed in clerk's office April 28, 1933.

Order allowing defendant to prosecute his appeal without prepaying costs or fees or giving surety dated January 6, 1933, and filed in clerk's office January 6, 1933. Petition praying for such an order dated December 21, 1932, and filed January 6, 1933, in clerk's office.

63 In United States District Court

[Title omitted.]

Stipulation as to Record

It is stipulated and agreed that the record in this case shall consist of this stipulation and the following:

1. The bill of indictment.
2. The bill of exceptions as signed by the trial judge.
3. Appellant's assignment of errors, and appellee's exceptions thereto.
4. Minutes of the court.
5. Orders extending time for serving, filing, and settling bill of exceptions, and for perfecting appeal, and all other orders signed by the trial judge in this cause.
6. Memorandum of clerk as to notice of appeal, citation, etc., in accordance with rule 14, section 7.
7. Clerk's certificate as to transcript of record.

It is also agreed that all documentary exhibits introduced on the trial of this cause and now in the possession of the clerk of the trial court shall be certified to the Circuit Court of Appeals by the clerk and shall be a part of this record.

This the 19th day of May 1933.

CHAS. A. HAMMER,
Harrisonburg, Va.
ALLEN ADAMS,
Greensboro, N.C.,
Attorneys for John S. Funk.

For the U.S. Attorney:
THOS. C. CARTER,
Asst. U.S. Attorney,
Middle District of North Carolina,
Attorney for the U.S.

64 In United States District Court

Order to Transmit Record

And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States

Circuit Court of Appeals for the Fourth Circuit, and the same is transmitted accordingly.

Teste: R. L. BLAYLOCK,
Clerk.

[SEAL]

By MYRTLE D. COBB,
Chief Deputy.

[Clerk's certificate to foregoing transcript omitted in printing.]

65 In United States Circuit Court of Appeals for the Fourth Circuit

No. 3517

JOHN S. FUNK, APPELLANT

versus

UNITED STATES OF AMERICA, APPELLEE

APPEAL from the District Court of the United States for the Middle District of North Carolina, at Greensboro

Docket entries

May 24, 1933, the transcript of record is filed and the cause docketed.

Same day, original notice of appeal, order allowing appeal, citation, petition and order allowing appellant to prosecute appeal in forma pauperis are certified up.

Same day, the appearance of Allen Adams is entered for the appellant.

Same day, three typewritten copies of the transcript of record are filed.

May 26, 1933, the appearance of Thos. C. Carter, Assistant U.S. Attorney, is entered for the appellee.

Same day, the appearance of Chas. A. Hammer is entered for the appellant.

66 In United States Circuit Court of Appeals

Order allowing appellant to prosecute appeal in forma pauperis

Filed May 27, 1933

Upon the application of the appellant by Allen Adams, his counsel, and it appearing to the court that the appellant has filed in the district court an affidavit as to his poverty,

It is ordered that the appellant be, and he is hereby, allowed to prosecute his appeal in this court in forma pauperis, and that the case be heard on the original transcript of record.

May 27, 1933. JOHN J. PARKER,
Senior Circuit Judge.

June 1, 1933, the appearance of J. R. McCrary, U.S. attorney, is entered for appellee.

June 3, 1933, stipulation of attorneys as to the time for the filing of their respective briefs is filed.

In United States Circuit Court of Appeals

Motion of appellee to dismiss

Filed June 13, 1933

Now comes J. R. McCrary, United States Attorney, and attorney for the United States in this cause, and moves the court to dismiss the appeal as docketed for the following reasons:

67 I

That the court was without jurisdiction to allow an appeal in this case for the reason that the December term of United States District Court for the Middle District of North Carolina, held at Greensboro, North Carolina, at which time this cause was tried, was not extended by rule of the court, nor by special order of the court, for the purpose of this appeal; that said court adjourned sine die and no order was made in this case extending said term for the purpose of preparing and settling bill of exceptions, or perfecting said appeal, and therefore the court was without jurisdiction to allow the said appeal.

II

For the reason that supersedeas bond was allowed in the case before any assignment of errors was filed by the appellant, and no assignment of errors was filed at the time the appeal was allowed in the case by the trial judge, the said assignment of errors being filed after the filing of the bill of exceptions.

Wherefore, it is prayed the court that this appeal be dismissed under the rules of this court and the law made and provided.

This the 12th day of June 1933.

J. R. McCrary,
United States Attorney.
Thos. C. Carter,
Assistant U.S. Attorney.

68 June 14, 1933, original exhibits (documents) are certified up.

June 21, 1933, the appearance of Jno. W. Carter, Jr., is entered for the appellant.

June 22, 1933, the appearance of Allen Adams is entered for the appellant.

In United States Circuit Court of Appeals

Argument on motion of appellee to dismiss

June 22, 1933 (June term, 1933), cause came on to be heard on the motion of the appellee to dismiss the appeal before Parker, Northcott, and Soper, circuit judges, and is argued by counsel and submitted. Motion overruled in open court.

In United States Circuit Court of Appeals

Argument of causes on merits

June 22, 1933 (June term, 1933), cause came on to be heard on the merits before Parker, Northcott, and Soper, circuit judges, and is argued by counsel and submitted.

69 In United States Circuit Court of Appeals, Fourth Circuit

No. 3517

JOHN S. FUNK, APPELLANT

versus

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the Middle District of North Carolina, at Greensboro

(Argued June 22, 1933. Decided July 3, 1933)

Before PARKER, NORTHCOTT, and SOPER, Circuit Judges

John W. Carter, Jr., and Allen Adams (Chas. A. Hammer on brief) for appellant, and Thomas C. Carter, assistant U.S. attorney (J. R. McCrary, U.S. attorney, on brief) for appellee.

Opinion

FILED JULY 3, 1933

NORTHCOTT, Circuit Judge:

70 Appellant was convicted at the December term of the District Court of the United States for the Middle District of North Carolina, at Greensboro, on an indictment charging him with conspiracy to violate the National Prohibition Act and was sentenced to serve a term of one year and one day in the Federal penitentiary. Appellant was charged in the indictment with conspiring with one Charlie Martin, one Gus Dowdy and others, and was at the time of the alleged commission of the offense charged a Federal pro-

hibition agent. Martin was not indicted and was used as a witness against appellant, who will be here referred to as the defendant.

At a former trial the defendant and Dowdy were convicted and the case was appealed to this court (Funk v. United States, 46 Fed. (2) 417). In the last trial the Government did not ask a verdict against Dowdy and the case was dismissed as to him.

As will be seen from the former opinion of this court the judgment in the first trial was reversed as to Funk because the trial judge admitted certain evidence as corroborating Martin, the accomplice, which this court held was improperly admitted. On the second trial this evidence was not offered. Practically all the points raised on the present appeal were passed upon by this court in its former opinion with the exception of the question of variance between the allegations in the indictment and the testimony as given at the trial.

On the question of variance we are of the opinion that while the indictment contains many things not necessary to be alleged, it properly charges a conspiracy to violate the National Prohibition Act, and that while some parts of the conspiracy as alleged were not proven, the allegations of the indictment were sufficiently supported by the evidence to make the proof of the crime complete. The substantial rights of the defendant were not affected by the failure to prove all the acts charged in the trial (See, U.S. v. Weiss, 293 Fed. 992, cited with approval in Fort v. U.S., 273 U.S. 593; Manning v. U.S., 275 Fed. 29; Rudner v. U.S., 281 Fed 516). A contention as to variance that has more of technicality than substance will not be considered.

71

Bennett *v.* United States, 227 U.S. 333.

As was said by Judge Cochran, (in Funk *v.* United States, supra):

"We are not unmindful of the effect of sec. 269 of the Judicial Code, as amended by the act of February 26, 1919 (U.S. Code, title 28, sec. 321), whereby on the hearing of an appeal, we are required to give judgment after an examination of the entire record, without regard to technical errors or defects, which do not affect the substantial rights of the parties. This salutary legislation has been construed in a number of cases and frequently applied in this circuit.

"Workman *v.* U.S. (C.C.A. 4th), 43 Fed. (2) 44, 45.

"Clarksburg Trust Co. *v.* Commercial Ins. Co. (C.C.A. 4th), 40 Fed. (2) 626, 634.

"Chesapeake & Ohio Ry. Co. *v.* Cochran (C.C.A. 4th), 22 Fed. (2) 22, 26, and cases cited.

"Ohio Valley Bank *v.* Greenebaum Sons Bank & Trust Co. (C.C.A. 4th), 11 Fed. (2) 87, 91."

All other assignments of error that are of sufficient merit to warrant discussion were fully considered and, we think, properly passed on in the former decision. The testimony of the accomplice Martin was fully corroborated. There was ample evidence, aside from the testimony of the accomplice, to justify the verdict of the jury. The

charge of the trial judge was fair, to say the least, to the defendant, and there were no exceptions to it.

The judgment of the court below is accordingly affirmed.

72 In United States Circuit Court of Appeals, Fourth Circuit

No. 3517

JOHN S. FUNK, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

APPEAL from the District Court of the United States for the Middle District of North Carolina

Judgment

Filed and entered July 3, 1933

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

July 3, 1933. ELLIOTT NORTHCOTT,
U. S. Circuit Judge.

July 14, 1933, petition of appellant for a stay of the mandate is filed.

73 In United States Circuit Court of Appeals

Order staying mandate

Filed July 14, 1933

Upon the application of the appellant, by his attorney John W. Carter, Jr., Esq., and for good cause shown,

It is ordered that the mandate of this court in the above-entitled cause be, and the same is hereby, stayed pending the application of the appellant in the Supreme Court of the United States for a writ of certiorari, unless otherwise ordered by this court or the said Supreme Court, and provided said application is filed in the said Supreme Court within 30 days from this date.

July 14, 1933. JOHN J. PARKER,
Senior Circuit Judge.

74 [Clerk's certificate to foregoing transcript omitted in printing.]

75 Supreme Court of the United States

Order allowing certiorari

Filed October 16, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, limited to the question as to what law is applicable to the determination of the competency of the wife of the petitioner as a witness. The case is advanced and assigned for argument on Monday, November 13 next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

76 (Endorsement on cover:) File no. 37,997. U.S. Circuit Court of Appeals, Fourth Circuit. Term no. 394. John S. Funk, petitioner, vs. the United States of America. Petition for writ of certiorari and exhibit thereto. Filed August 28, 1933. No. 394 O.T. 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933